



# भारत का राजपत्र

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EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

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गृह मंत्रालय

अधिसूचना

नई दिल्ली, 6 अगस्त, 2012

**का.आ. 1745(अ).**—जैसाकि, केन्द्रीय सरकार ने, विधि-विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) (जिसे इसके बाद उक्त अधिनियम कहा जाएगा) की धारा 3 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की दिनांक 3 फरवरी, 2012 की अधिसूचना सं. का.आ. 224(अ) (जिसे इसके बाद उक्त अधिसूचना कहा जाएगा) के तहत स्टूडेंट्स इस्लामिक मूवमेंट ऑफ इंडिया (सिमी) को विधि-विरुद्ध संगम घोषित किया है;

और, केन्द्रीय सरकार ने उक्त अधिनियम की धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत सरकार के गृह मंत्रालय की दिनांक 1 मार्च, 2012 की अधिसूचना सं. का.आ. 362(अ) के तहत विधि-विरुद्ध क्रियाकलाप (निवारण) अधिकरण का गठन किया था, जिसमें दिल्ली उच्च न्यायालय के माननीय न्यायाधीश न्यायविद् श्री वी. के. शाली थे;

और, केन्द्रीय सरकार ने उक्त अधिनियम की धारा 4 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इस न्यायनिर्णय के प्रयोजन के लिए कि क्या उक्त संगम को विधि-विरुद्ध घोषित किए जाने का पर्याप्त कारण था या नहीं, दिनांक 2 मार्च, 2012 को उक्त अधिकरण को उक्त अधिसूचना निर्दिष्ट की थी;

और, उक्त अधिकरण ने, उक्त अधिनियम की धारा 4 की उप-धारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, दिनांक 3 फरवरी, 2012 की अधिसूचना संख्या का.आ. 224(अ) में की गई

घोषणा की पुष्टि करते हुए दिनांक 1 अगस्त, 2012 को एक आदेश पारित किया था।

अतः; अब, केन्द्रीय सरकार उक्त अधिनियम की धारा 4 की उप-धारा (4) के अनुसार में उक्त अधिकरण के निम्नलिखित आदेश को प्रकाशित करती है, अर्थात् :

(आदेश अंग्रेजी भाग में छपा है)

[फा. सं. 14017/13/2012-एन.आई. 111]

रश्मि गोयल, संयुक्त सचिव

### MINISTRY OF HOME AFFAIRS

#### NOTIFICATION

New Delhi, the 6th August, 2012

**S.O. 1745(E).**—Whereas the Central Government in exercise of the powers conferred by sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) (hereinafter referred to as said Act), declared the Students Islamic Movement of India (SIMI) to be unlawful association *vide* notification of the Government of India in the Ministry of Home Affairs number S.O. 224 (1) dated the 3rd February, 2012 herein (hereinafter referred to as said notification);

And, whereas, the Central Government in exercise of the powers conferred by sub-section (1) of Section 5 of the said Act constituted *vide* notification of the Government of India in the Ministry of Home Affairs number S.O. 302 (E) dated 1st March, 2012, the Unlawful Activities (Prevention) Tribunal consisting of Mr. Justice V.K. Shali, Judge of the High Court of Delhi;

And, whereas, the Central Government in exercise of the powers conferred by sub-section (1) of Section 4 of the said Act referred the said notification to the said Tribunal on the 2nd March, 2012 for the purpose of adjudicating whether or not there was sufficient cause for declaring the said association as unlawful;

And, whereas, the said Tribunal in exercise of the powers conferred by sub-section (3) of Section 4 of the said Act, made an order on the 1st August, 2012, confirming the declaration made in the notification number S.O. 224 (E), dated the 3rd February, 2012.

Now, therefore, in pursuance of sub-section (4) of Section 4 of the said Act, the Central Government hereby publishes the following order of the said Tribunal, namely :—

**UNLAWFUL ACTIVITIES (PREVENTION)  
TRIBUNAL, NEW DELHI**

Date of decision : August 01, 2012

In the matter of :

Gazette Notification No. S.O. 224(E) dated 3rd February, 2012 declaring Students Islamic Movement of India as Unlawful Association under Section 3(1) of the Unlawful Activities (Prevention) Act, 1967.

**CORAM :**

**HON'BLE MR. JUSTICE V. K. SHAIJ**

**Present :**

Mr. A. S. Chandhiok, Additional Solicitor General with Mr. Sanjay Katyal, Central Govt. Senior Counsel, Mr. Ravinder Agarwal, Mr. Sachin Datta, Central Govt. Standing Counsels and Dr. Shailender Sharma, Central Govt. Pleader.

Mr. V.K. Sharma, Director, Mr. M.P. Singh, Under Secretary and Mr. Manoj Kumar Singh, Investigator from Ministry of Home Affairs, Government of India.

Mr. Ashok Aggarwal, Mr. Mobin Akhtar and Ms. Sridevi Panniker, Advocates for Mr. Humam Ahmed Siddiqui & Mr. Misbah-Ul-Islam, former members of SIMI.

**ORDER**

1. In exercise of powers conferred by sub-section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 (Act No. 37 of 1967) (hereinafter referred to as the 'Act') and *vide* Notification No. S.O. 224(E) dated 3rd February, 2012, the Government of India declared Students Islamic Movement of India [for short 'SIMI'] as 'Unlawful Association'.

2. The Government of India came to the conclusion that SIMI was an Unlawful Association, *inter alia*, on the grounds that SIMI is indulging in activities which are prejudicial to the integrity and security of the country; that SIMI has been indulging in unlawful and violent activities, including involvement in high intensity bomb blast which occurred on 13th February, 2010 at German Bakery, North

Main Road, Koregaon Park, Pune, in which seventeen persons (male and female) died and fifty-six others sustained injuries of different magnitude; firing on ATS police party on 3rd July, 2011, in which one inspector died and also planning, preparing and coordinating other terrorist activities, which are against civilian, security establishment and also harmful to communal harmony. Further, several SIMI members were arrested by the police at various places in India and large numbers of arms, ammunitions, illegal documents etc. were seized from these members and various criminal cases have been registered against them. These activists also indulged in robbery of gold etc. for the purpose of purchasing arms and strengthening the banned organization SIMI.

3. Exercising the powers conferred by sub-section (1) of Section 5 of the Act, Ministry of Home Affairs, Government of India, *vide* Notification No. S.O. 362(E) dated 1st March, 2012 constituted this Tribunal for the purpose of adjudicating as to whether there were sufficient grounds for declaring the SIMI as an Unlawful Association under the Act and a reference was made to this Tribunal under Section 4 of the Act. The reference was received by this Tribunal on 5th March, 2012.

4. Along with the aforesaid Notification, the Central Government has furnished a background note on SIMI stating the various activities of the organization before imposition of the first ban in the year 2001, till the imposition of this ban in the year 2012. As per the background note, the objectives of SIMI are as under :

- (i) Governing of human life on the basis of Quran;
- (ii) Propagation of Islam;
- (iii) "Jehad" (religious war) for the cause of Islam; and
- (iv) Destruction of Nationalism and establishment of Islamic Rule or Caliphate.

5. The background note states the following activities of SIMI after February, 2010 and before imposition of sixth ban in February, 2012 as the grounds for continuation of the ban :—

- (a) Regrouping under the garb of various banners;
- (b) Radicalizing, brainwashing the minds and indoctrination of Muslim youth by Jehadi propaganda and through provocative taqreers (lectures/speeches), CDs, etc.;
- (c) Instigating Muslims on the Ram Janambhumi-Babri Masjid (RJB-BM) verdict delivered by the Lucknow Bench of the Allahabad High Court;
- (d) Furthering the objectives of SIMI through cover organizations;
- (e) Besides, arrest of SIMI activists during 2011 have revealed several nefarious designs of SIMI, including their plans to physically eliminate targeted individuals, establish nexus with like-minded jehadi outfits in India and abroad, etc.

6. The background note further states that SIMI has been active through various front/cover organizations in

different States; prominent amongst which is the Wahadat-e-Islami (WeL) in States of Maharashtra, Tamil Nadu, Uttar Pradesh, Kerala, Delhi and Rajasthan. The said organization provides a platform to ex-SIMI activists to expand their militant reach amongst Muslim youth under the guise of spreading Islamic ideology. It is further stated that to avoid legal scrutiny and publicity of its activities, SIMI tried to carry out its activities under the garb of cover organizations in several States of the country like, in Kerala, SIMI is carrying out its activities under the banner of 'Minority Rights Watch' (MRW); in Madhya Pradesh, an organization named 'Nagori Lashkar' was floated by pro-SIMI elements of Nagori community; in Karnataka, it established an organization called 'Ansarullah'; in Uttar Pradesh, it has established 'Muslim Muttahida Mihad' etc. and all these organizations were used by ex-SIMI activists to counter the alleged threats/campaign against Islam. It is further stated that SIMI has been making constant efforts to establish links with terrorist outfits operating in Jammu and Kashmir and abroad, including Jaish-e-Mohammad (JeM) and Lashkar-e-Taiba (LeT), to expand its network and to carry out violent actions. It is further stated that SIMI activists continue to circulate subversive and provocative material since February, 2010, including CDs, cassettes, leaflets, books and magazines, which were circulated in various States, generally containing inflammatory jehadi speeches, revenge for Babri Masjid demolition, and the so-called conspiracy of Zionist forces, 'Jehad' and 'Khilafat'. The background note further mentioned various other illegal activities of SIMI and the inputs received from various States about the activities of SIMI.

7. The Central Government in their Gazette Notification dated 3rd February, 2012 has summarized the cases involving SIMI, alleging that its activists were indulging in activities which are prejudicial to the integrity and security of the country. The cases have been summarized as under:—

(a) On 13th February, 2010 a high intensity bomb blast occurred at German Bakery, North Main Road, Koregaon Park, Pune, in which seventeen persons (male and female) died and fifty-six others sustained injuries of different magnitude. The samples collected from the spot were sent for examination to the State Forensic Science Laboratory (FSL) and for investigation to CBI, New Delhi. The Forensic Science Laboratory (FSL) has opined that "Traces of Cyclonite (RDX), "Ammonium Nitrate ions along with Petroleum Hydrocarbon oil are detected. RDX is used as High explosive". This case revealed that the arrested accused Mirza Himayat Inayat Baig alias Ahmed Baig Inayat Mirza alias Yusuf had conspired with wanted accused Mohasin Choudhary, Ahmed Siddipappa alias Yasin Bhatkal, Iqbal Bhatkal, and Riyaz Bhatkal to prepare and explode the bomb at German Bakery, Pune on 13th February, 2010. The

above persons by unlawful means had committed this offence of the bomb blast for promoting insurgency. The Anti Terrorist Squad (ATS), Mumbai, Maharashtra registered a Case Crime No. 6/2010 (Bund Garden Police Station Cr. No. 83/2010) under Sections 302, 307, 326, 325, 324, 427, 120B of Indian Penal Code (IPC) read with Sections 3, 4, 5 of the Explosive Substances Act read with Sections 16, 18, 21 of the Unlawful Activities (Prevention) Act, 1967. The accused persons are active members of SIMI;

- (b) Case Crime No. 21/2010, at ATS Mumbai PS under Sections 10, 13, 15, 18, 18(a) and 18(b) of the Unlawful Activities (Prevention) Act, 1967 read with Sections 120B, 465, 467, 468 read with Section 419, 420 of IPC read with Sections 3, 4, 5, 6 of the Explosive Substances Act, 1908 was registered. Two SIMI activists were arrested. The accused were planning, preparing and coordinating terrorist activities against civilian and security establishments. To accomplish the given task they received RDX, detonators, etc. but before they could strike they were apprehended;
- (c) On 22nd August, 2011, one accused person was arrested by ATS, Thane Unit. The accused was found with fake Indian currency notes of ninety-seven thousand five hundred rupees. He was sent illegally to Pakistan in the year 2000 by Indian Mujahiddin member Riyaz Bhatkal. The accused had taken terrorist training in Pakistan as well as Kandahar in Afghanistan. Another accused was arrested and was found in possession of thirty thousand rupees fake Indian currency notes. The ATS, Mumbai, Maharashtra has registered Case Crime No. 31/2011 under Section 489A, 489B, 489C of IPC read with Section 15, 17 of the Unlawful Activities (Prevention) Act, 1967 (amended in 2008). Both accused persons are members of banned SIMI organization;
- (d) Case Crime No. 274/2011 under Section 420, 468, 120B of I.P.C. of Abid Road PS and Crime No. 312/2011 under Section 120B, 121A, 125, 126 of I.P.C. and Section 10, 13 read with Section 3 of the Unlawful Activities (Prevention) Act, 1967, was registered. One accused, Syed Afaque Iqbal alias Danish Iqbal, a member of SIMI, resident of Ranchi, Jharkhand who is an accused in Case Crime No. 203/2008 of Maninagar PS, Ahmedabad (Gujarat) was arrested. He revealed that he resided at different places in Hyderabad since 2008. To avoid arrest in different cases under trial including Ahmedabad serial bomb blasts, he obtained SIM cards under fictitious names;
- (e) On 24th November, 2010, Muneer Deshmukh, former All India Secretary of SIMI was arrested by Madhya Pradesh Police for his involvement in seven cases in Madhya Pradesh, all pertaining to SIMI activities. Case Crime No. 245/2011, at PS Narayangudda, Hyderabad, Andhra Pradesh, has been registered under Section 177, 419 of I.P.C.;

(f) Case Crime No. 87/2010, at PS Hussaini alam, Hyderabad, Andhra Pradesh, has been registered under Sections 302, 120B, 122, 123, 124A read with Section 34 of I.P.C., Section 25(i)(A) and 27 of the Arms Act, 1959, Section 16, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 for opening fire by accused on the police personnel on picket duty;

(g) On 15th May, 2010, Case Crime No. 37/2010, at PS Suntikoppa, Kodagu district (Karnataka), has been registered under Section 143, 147, 148, 120B, 121, 121(A), 153(A), 201, 149 of I.P.C., Sections 10, 11, 13, 16, 18, 18(A)(B) of the Unlawful Activities (Prevention) Act, 1967 and Sections 3 and 5 of the Explosive Substances Act, 1908;

(h) In a raid conducted at 'Other Books', Kozhikode, police seized a computer hard disk containing materials which are harmful to communal harmony. The owner of the book shop is an ex-SIMI activist. A Case Crime No. 424/2010, at Town PS, Kozhikode, Kerala has been registered under Section 102 of Criminal Procedure Code (Cr.P.C.) and accused has been arrested;

(i) In a raid conducted at Nanma Books, Kozhikode, police seized articles which are harmful to communal harmony. One accused has been arrested and a Case Crime No. 448/2010 registered at Town PS, Kozhikode, Kerala under Section 124A, 153A of I.P.C.;

(j) Case Crime No. 159/2011, at Kollengode Police Station, Palakkad District, Kerala has been registered under Section 151 of I.P.C. for conducting a study class at Idukappara Mosque, Muthalamada within Kollengode Police Station limits. Twenty-one persons had attended the class. On enquiry, it was revealed that out of twenty-one persons, twenty belonged to Coimbatore and one belonged to Chennai. Their purpose of study/class in the mosque was said to be attending religious classes regarding how to pray and how to perform Niskara, etc. Among the twenty-one persons, some former activists of SIMI were also involved. All the twenty-one persons were arrested and enlarged on bail;

(k) Case Crime No. 35/2011, at PS GRP, Ratlam, Madhya Pradesh, has been registered under Section 307 read with 34 of I.P.C. and Section 10, 13, 15 of the Unlawful Activities (Prevention) Act, 1967. Two accused were arrested for firing on ATS Police Party on 3rd July, 2011, in which one Inspector died. The accused are members of SIMI organization;

(l) Case Crime No. 319/2011, at PS Kotwali, Khandwa, Madhya Pradesh, has been registered under Section 153A of I.P.C. read with Section 3, 10, 13, 16, 18, 20 of the Unlawful Activities (Prevention) Act, 1967 and Section 25, 27 of Arms Act, 1959. Twelve accused have been arrested and five pistols, two revolvers, sixteen bullets, four motor cycles, SIMI literature and CD's have been recovered and seized by the State Police. All the accused are members of banned organization SIMI;

(m) Eleven accused SIMI members have been arrested for planning unlawful activities between June-July, 2011 in case Crime No. 14/2009 and 164/2009 at Kotwali, Khandwa, Madhya Pradesh under various Sections of the Indian Penal Code, the Arms Act, 1959 and the Unlawful Activities (Prevention) Act, 1967. The Police recovered and seized two pistols, one pistol magazine with three bullets and one motorcycle from the accused;

(n) Case Crime No. 224/2011, at PS Station Road, Ratlam, Madhya Pradesh, has been registered under Section 307 of I.P.C., Sections 25, 27 of the Arms Act, 1959 and Sections 10, 13, 16, 19 of the Unlawful Activities (Prevention) Act, 1967. Three accused have been arrested. All the accused are members of SIMI. Police recovered and seized a Revolver, Blank Cartridge and SIMI literature from them;

(o) Case Crime No. 290/2011, at PS Manak Chowk, Ratlam, Madhya Pradesh, has been registered under Section 153A of I.P.C. read with Sections 10, 13, 17, 19 of the Unlawful Activities (Prevention) Act, 1967. Five accused have been arrested. One of the accused is a member of SIMI and other accused have been helping him in his activities, i.e., collection of money for organization, enrolling new members for SIMI and providing materials for advertising the SIMI organization. Police recovered and seized four CDs related to Jihad, SIMI literature, Easy Quran Para I to 4, Samaz Sudhar Patrika, SIMI membership form for Ahadnama Barahe Awaz, information about making Bomb, three SIM cards and one mobile phone from the accused;

(p) Eight accused were arrested by ATS, Bhopal, Madhya Pradesh for doing unlawful and anti-national activities, collection of money, doing bank robberies and targeting important persons. Case Crime Nos. 04/2011 and 05/2011 were registered under various Sections of the Indian Penal Code, the Arms Act, 1959 and the Unlawful Activities (Prevention) Act, 1967. Police recovered and seized gold, pistol, illegal documents and literature related to activities of organization;

(q) Case Crime No. 431/2010, Hanumanganj PS, Bhopal, Madhya Pradesh was registered under Section 395, 397 of I.P.C. Section 25 of the Arms Act, 1959 and Sections 3, 10, 13, 16, 17, 18 of the Unlawful Activities (Prevention) Act, 1967. Five accused have been arrested and one hundred fifty gram Gold from Akola, eighty gram Gold from Bhusawal, two hundred forty gram Gold from Kolkata have been recovered and seized. The accused are members of SIMI and doing robbery for purchasing arms and strengthening the SIMI organization;

(r) Seventeen accused were arrested in Case Crime Nos. 168/2011 at PS Itarsi, Hoshangabad; Crime No. 112-2011 at PS Birlagram, Ujjain; and Crime No. 456/2009 at PS BNP, Dewas which were registered under

various Sections of the Arms Act, 1959, the Indian Penal Code and the Unlawful Activities (Prevention) Act, 1967. Accused are members of banned SIMI organization and doing robbery to collect money for strengthening the organization, purchasing arms, making new members as well as for taking bail of Safdar Nagori and his supporters;

(s) Six SIMI activists have been convicted in case Crime No. 1-16/2003, dated the 11th December, 2003, registered under Sections 120B, 121(1), 122 of I.P.C. read with Sections 3(3), 4, 20, 21(2)(b), 22(3)(A), (B) of the Prevention of Terrorism Act, 2002 read with Sections 25(1)(a) and (e) and 29 of the Arms Act, 1959, at PS Detection of Crime Branch, Ahmedabad City, Gujarat. These accused persons were arrested for attempting to take revenge for post Godhra riots in Gujarat;

(t) Nine SIMI activists have been sentenced to two years imprisonment and a fine of five hundred rupees has been imposed on each under Section 10 read with Section 3 of the Unlawful Activities (Prevention) Act, 1967; and sentence of three years imprisonment and a fine of five hundred rupees has been imposed on each under Section 13 of the Unlawful Activities (Prevention) Act, 1967, in case Crime No. 104/2008, registered under Sections 10, 11, 13 of the Unlawful Activities (Prevention) Act, 1967 at PS-Chachaura, Guna, Madhya Pradesh;

(u) One SIMI activist, Md. Yunus had been sentenced to two years imprisonment and a fine of twenty-five thousand rupees has been imposed in case Crime No. 135/2008, registered under Section 153A of the Indian Penal Code and Sections 3, 10, 13 of the Unlawful Activities (Prevention) Act, 1967 at PS-Sadar Bazar, Indore, Madhya Pradesh;

(v) Five SIMI activists have been sentenced to three years imprisonment and fine of one thousand five hundred rupees has been imposed on each under Section 124A of I.P.C.; sentence of two years imprisonment and a fine of one thousand rupees has been imposed on each under Section 153A of I.P.C.; sentence of one year imprisonment and a fine of five hundred rupees has been imposed on each under Section 10 of the Unlawful Activities (Prevention) Act, 1967; and sentence of five years imprisonment and a fine of two thousand five hundred rupees has been imposed on each under Section 13 of the Unlawful Activities (Prevention) Act, 1967 in case Crime No. 62/2008 of PS-Unhel, District-Ujjain, Madhya Pradesh;

(w) One SIMI activist, Muneer Deshmukh had been sentenced to three years imprisonment and a fine of five hundred rupees has been imposed in case Crime No. 626/2001, registered under Sections 153B, 295A of I.P.C. read with Sections 10, 11, 13 of the Unlawful Activities (Prevention) Act, 1967 at PS-Habibganj, Bhopal, Madhya Pradesh;

(x) Six SIMI activists including Muneer Deshmukh have been sentenced to three years imprisonment and a fine of five hundred rupees has been imposed on each, in case Crime No. 663/2000, registered under Sections 153A, 153B of I.P.C. at PS Shahjehanabad, Bhopal, Madhya Pradesh. The prosecution had contended that the accused have pasted posters in Shahjehanabad locality of Bhopal on 22nd October, 2000 with the intention to create communal disturbance;

(y) Three SIMI activists were sentenced to three years rigorous imprisonment by the Court of First Class Judicial Magistrate, District and Sessions Court, Indore on 30th August, 2011 in case Crime No. 5/2009 of PS-ATS/STF, Indore, Madhya Pradesh, registered under Sections 147, 149, 153A, 153B of I.P.C. read with Sections 3, 10, 13 of the Unlawful Activities (Prevention) Act, 1967;

(z) On 31st October, 2011, JMFC Court convicted two SIMI activists and sentenced them to two years imprisonment and fine of five hundred rupees has been imposed on each for destructive activities to disturb communal harmony in Gohalpur area in 1998 in case Crime No. 637/1998 registered under Section 153A of I.P.C. at PS-Gohalpur, Jabalpur, Madhya Pradesh.

8. On the afore-noted grounds, the Central Government formed an opinion that the activities of SIMI, for fulfilling its objectives, are unlawful, detrimental to and disruptive of the territorial integrity of India, promote enmity between different communities and seriously threaten the security of the State. The Central Government formed the opinion that if the 'unlawful activities' of the SIMI are not curbed and controlled immediately, it will take the opportunity to:

- (i) continue its subversive activities and re-organize its activists who are still absconding;
- (ii) disrupt the secular fabric of the country by polluting the minds of the people by creating communal disharmony;
- (iii) propagate anti-national sentiments;
- (iv) escalate secessionism by supporting militancy; and
- (v) undertake activities which are prejudicial to the integrity and security of the country.

Thus, in exercise of powers conferred by sub-section (1) of Section 3 of the Act, the Central Government declared SIMI as an 'unlawful association' with immediate effect, within the meaning of Section 2(p) of the Act for carrying 'unlawful activity' within the meaning of Section 2(O) of the Act. This was followed by a Notification under Section 4 of the Act, constituting the Unlawful Activities (Prevention) Tribunal, which was received on 5th March, 2012. The Tribunal listed the reference for preliminary hearing on 6th March, 2012.

9. On 6th March, 2012, on consideration of the material placed on record by the Central Government, the Tribunal

issued notice under sub-section (2) of Section 4 of the Act to SIMI and some other activists of the organization to Show Cause as to why it be not declared an 'unlawful association' on the cause being shown by Union of India. The notice was directed to be served in the following manner:

- I. By affixing a copy of the notification to some conspicuous part of the office(s), if any, of the Association;
- II. By serving a copy of the notification, wherever possible, on the principal office-bearers, if any, of the Association;
- III. The notice be also served by registered post/speed post/courier;
- IV. By proclaiming by beat of drums or by means of loudspeakers, the contents of the notification in the area in which the activities of the Association are ordinarily carried on;
- V. By making an announcement over the radio from the local or nearest broadcasting station of the All India Radio;
- VI. By pasting the notification on the Notice Board of the office of the Deputy Commissioners at the Headquarters of each of the Districts in the States, where the activities of the Association are undertaken; and
- VII. By publication in two National Newspapers in English and in two vernacular newspapers of the respective States in which the activities of SIMI are ordinarily carried on.
10. Pursuant to the directions given by the Tribunal, the States of Andhra Pradesh, Delhi, Gujarat, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Rajasthan, Uttar Pradesh, Uttarakhand, West Bengal, Tamil Nadu and Chhattisgarh filed their respective affidavits of service, putting on record the factum of service of notice.
11. On 11th April, 2012, Mr. Ashok Aggarwal along with Mr. S. M. Khan, Mr. Mobin Akhtar and Ms. Sridevi Panikker, Advocates, entered appearance on behalf of two erstwhile members of the banned organization SIMI, namely Mr. Humam Ahmed Siddiqui, former President of SIMI (UP zone); and Mr. Misbah-Ul-Islam, former member of SIMI (West Bengal unit). It was stated by the learned counsel that Mr. Humam Ahmed Siddiqui was served with a copy of the notice whereas Mr. Misbah-Ul-Islam got the knowledge of these proceedings through the public notice. It was further submitted that since the organization has been banned since 2001, it has not been in existence thereafter and there are no office bearers or members of the organization.
12. The appearance on behalf of the two erstwhile members of SIMI was objected to by Mr. A. S. Chandhok learned Additional Solicitor General on the ground that Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam in their individual capacities are not entitled to be represented in these proceedings since it is only the association, its

office bearers or members who can object to the ban on the association. The question of appearance of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam was taken up on 16th April, 2012 and after hearing the learned counsel for Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam and the learned Additional Solicitor General, this Tribunal, having regard to the facts of the case and the observations made in the previous report, permitted Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam to join and participate in the proceedings although it was observed that the question of their locus will be decided in the final report after hearing the parties. Pending the final adjudication, they were also granted permission by the Central Government and to lead their evidence opposing the ban.

13. On 18.5.2012, they filed their reply/statement of objections/written statement under Section 4(2) of the Act. It may, however, be pertinent to note, at this stage, that the said reply/statement of objections/written statement was neither signed nor verified, so as to meet the basic legal requirements for it to be taken on record, although it was supported by the affidavits of the applicants.

14. However, de-hors, this technical deficiency and legality of the said reply/statement of objections/written statements, it is, inter alia, stated in the preliminary submissions that SIMI was never a criminal organization, none of its aims and objects, as stated in its constitution, are unlawful or illegal. It is further claimed that as a lawful and law abiding association of persons, SIMI ceased to exist the moment it was banned by the Central Government in September, 2001. They have claimed that merely because some members or former members of an organization or association of persons are found to have been involved in illegal or even criminal activities, the entire organization or association does not become tainted or suspected. It is further claimed that the material relied upon by the Central Government to justify the ban on SIMI under Section 3(1) of the Act, comprises of alleged confessions/disclosure statements by persons arrested in connection with various offences in several States. It is submitted that such statements cannot be taken as 'evidence' in any sense of the expression, being merely statements made to or recorded by police officers under Section 161/162 of the Code of Criminal Procedure, 1973. It is stated that such statements can only be used for contradiction as per Section 145 of the Evidence Act, 1872. It is also claimed that Notification dated 3.2.2012 suffers from lack of fresh and/or any relevant grounds justifying the existence of 'sufficient cause' and that grounds or cause once used to exercise powers under Section 3 of the Act cannot be used repeatedly to invoke the said powers.

15. It is further claimed that the grounds narrated in the Notification banning SIMI are not valid. The allegations in the background note are also claimed to be full of imaginary names and places and devoid of authentic details. In the absence of these details, notice of these proceedings to

the respondents is neither effective nor adequate. It is also stated that the notice issued by the Tribunal does not fulfil the requirements of Section 4(2) of the Act as there is no 'disclosure of the basis of the action', as mandated by Section 4(2) of the Act, and as explained by the Supreme Court in *Jamaat-e-Islami Hind Vs. Union of India*, (1995) 1 SCC 428 case. It is submitted that the said notice does not constitute 'effective notice of the basis on which the declaration is made' and a reasonable opportunity to show cause against the same, as required by virtue of the said judgment is not given. It is, thus, claimed that in the absence of such disclosure the impugned Notification is bad in law and is liable to be quashed, *inter-alia*, for violating the fundamental right of the answering respondents under Article 19(1)(c), not being a reasonable restriction permissible under Article 19(4) of the Constitution of India.

16. It is also claimed in the reply that the background note makes allegations against a large number of Muslim organizations and that none of these allegations are substantiated in any manner. In these circumstances, the only reasonable inference is that these allegations indicate

the bias of the Central Government against the Muslim community. It is also claimed that one such organization, namely, Khair-e-Ummat Trust, which has been called a front organization of SIMI, has publicly protested against these allegations and that this fact was even reported in the Press, wherein the said Trust denied having any relationship with SIMI.

17. Another objection raised by the applicants/intervenors is with regard to the absence of valid and justifiable ground in the impugned Notification/background note. It is claimed that the background note is full of unnecessary and scandalized averments that can serve no purpose, other than to embarrass the applicants/intervenors. It is submitted that the background note contains allegations, averments and insinuations pertaining to the period prior to 5.2.2010 and thus offends the principles of *res judicata* and *constructive res judicata*, apart from being, against the canons of judicial propriety. It is claimed that such a repetition of allegations, averments and insinuations amounts to inviting this Hon'ble Tribunal to sit in judgment/review over the findings of the earlier Tribunal.

18. It is further claimed that the allegations in the background note are *mala-fide* and have been resorted to for two purposes, viz. (i) to prejudice this Tribunal against SIMI and (ii) to target other organizations, unconnected to SIMI, from taking up any issues or causes that the Government considers inconvenient. It is stated that there is no material in the background note that would bring SIMI within the mischief of Sections 2(o) and (p) of the Act. The ban, it is claimed, is intended to insinuate an aura of suspicion around the essential practices of Islam as if the practices themselves constitute unlawful activities and/or that every person who performs these practices is guilty of criminal conduct until proven innocent. It is submitted that such conduct violates the letter and spirit of the constitutionally guaranteed Fundamental Rights.

19. It is claimed that the activities of SIMI were always open and lawful. There was not even an iota of secrecy or unlawful nature in its activities. There was no occasion in about 25 years of SIMI's existence where any violence or even strife or disturbance had occurred in any part of the country as a result of any of its activities. It undertook several programmes, such as scholarship to the needy students, career guidance to the students for admission in higher courses and several other social events. It is claimed that SIMI, while it was in existence, never challenged the territorial integrity of the country, nor did it state anything which would incite communal violence in the country. The most outstanding contribution of SIMI has been in the field of social services and in the field of relief work during natural and manmade calamities. It has served all classes of people, irrespective of caste or creed. SIMI has full faith in Indian judiciary and is a law abiding and lawful association. It is claimed that from 1977 to 2001, SIMI has a distinguished record of outstanding services to all communities in the context of a secular India, the object of which it unwaveringly believes.

20. In the parawise reply, the answering applicants/intervenors have denied the allegations against them as given in the background note. It is also denied that SIMI is active in Andhra Pradesh, Gujarat, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal or Delhi. It is also denied that SIMI has undertaken any activity in the States of Assam, Bihar, Jharkhand or Uttarakhand.

21. The answering applicants/intervenors have also denied, the allegations as false and fabricated, that SIMI has managed to keep itself alive through clandestine activities or that SIMI regrouped its cadres and revived the organization through front organizations, clandestine meetings or through circulation of leaflets, posters or magazines. It is claimed that these allegations are completely devoid of any material particulars that would enable the applicants/intervenors to answer the same. No details have been provided of the alleged clandestine activities or how SIMI regrouped its cadres or revived the organizations which were the front organizations, floated to keep the SIMI organization alive.

22. The contents of paragraph 34 are also labelled as malicious and are denied. It is denied that during the period, since 5-2-2010, the activists/sympathizers of SIMI undertook any activities. It is claimed that no activities have been undertaken by or on behalf of SIMI since the imposition of first ban in September, 2001. It is further specifically denied that the alleged SIMI activists or sympathizers tried to regroup and/or were radicalizing and brainwashing and/or instigating Muslims on account of Ram Janam Bhoomi/Babri Masjid verdict delivered by the Lucknow Bench of the Allahabad High Court and/or furthering the objectives of SIMI. The applicants/intervenors have also denied the assertions of SIMI operating through the front organizations so as to continue to work for the fulfilment of the objects of SIMI.

23. It is, therefore, prayed that in the interest of justice, the reference and the Notification of Central Government dated 3-2-2012 declaring SIMI as an 'unlawful association' be cancelled.

24. Learned counsel representing Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam also filed various interlocutory applications seeking, inter-alia, a direction to hold the proceedings of the Tribunal at Delhi; supply of legible, typed and English translated copy of all documents relied upon by the Central Government; to confine the proceedings of the Tribunal to the material forwarded to it under Rule 5 of the Unlawful Activities (Prevention) Rules, 1968 along with notification dated 3rd February, 2012; to supply a complete list of witnesses along with documents sought to be relied upon or proved by the Central Government at least 15 days in advance of the date on which the said witnesses are to be examined; and also objecting to the manner in which, privilege is being claimed by the Central Government in respect of documents submitted to the Tribunal in sealed cover and non-disclosure of the contents of the sealed envelope to them. The said interlocutory applications were heard and disposed of by the Tribunal from time to time.

25. The Central Government, in their background note claimed that the activities of the banned organization are still continuing and the inputs were stated to have been received from the following State Governments/Union Territory Administration regarding the activities of SIMI:

- (i) Andhra Pradesh,
- (ii) Madhya Pradesh,
- (iii) Maharashtra,
- (iv) Gujarat,
- (v) Delhi,
- (vi) Karnataka,
- (vii) Kerala,
- (viii) Rajasthan,
- (ix) Tamil Nadu,
- (x) Uttar Pradesh,
- (xi) West Bengal,
- (xii) Assam,
- (xiii) Bihar,
- (xiv) Chhattisgarh,
- (xv) Uttarakhand, and
- (xvi) Jharkhand

26. Apart from 30 new cases, the Union of India also placed reliance on (i) certain old cases which, even though cited & considered by the previous Tribunals, have witnessed certain developments and progress after the report of the previous Tribunal, and (ii) cases which have earlier been cited and considered by the previous Tribunals wherein there is no progress in their status. It is stated that the relevance of the old cases in these proceedings is to

show the continuity of unlawful activities by the banned organization and its members in different parts of the country.

27. With a view to invite public representation in support of or against the ban on SIMI, this Tribunal held its sittings, apart from Delhi, at Trivandrum in Kerala; Udaipur in Rajasthan; Kolkata in West Bengal; Bangalore in Karnataka; Aurangabad and Mumbai in Maharashtra; Jabalpur and Indore in Madhya Pradesh; Hyderabad in Andhra Pradesh; Ahmedabad in Gujarat; and Madurai in Tamil Nadu, for the purposes of recording of evidence on behalf of the respective States and/or from members of the public. The witnesses deposing before the Tribunal were cross-examined by the learned counsel representing Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam.

28. Before advertiring to the appreciation of evidence brought on record before the Tribunal, it would be appropriate to deal with some of the legal submissions advanced by the parties on the issue of locus of Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam to be represented in these proceedings; the relevancy and the extent of admissibility of the confessional statements or even admissions purported to be made by the accused persons recorded before the police officers or while in police custody and the claims of Privilege by the Union of India in respect of secret documents. Each of these submissions are dealt with separately as under:

**(I) Locus-Standi of Humam Ahmed Siddiqui and Misbah-Ul-Islam :**

One of the main issues raised by the learned ASG, Mr. Chandhok, is with regard to the locus of the applicants/intervenors, Misbah-Ul-Islam and H.A. Siddiqui to participate in these proceedings and their right to cross-examine the witnesses produced by the UOI. In this regard, the learned ASG has referred to the definition of the terms 'unlawful activity' as given in Section 2(o) of the Act and 'unlawful association' as given in Section 2(p) of the Act. The said definitions are reproduced for convenience of reference:

"2(o) 'Unlawful activity', in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise).—

- (i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or
- (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or
- (iii) which causes or is intended to cause disaffection against India;

2 (p) "unlawful association" means any association,—

- which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or
- which has for its object any activity which is punishable under Section 153A or Section 153B of the Indian Penal Code (45 of 1860), or which encourages; or aids persons to undertake any such activity, or of which the members undertake any such activity:

Provided that nothing contained in sub-clause (ii) shall apply to the State of Jammu and Kashmir."

29. The learned ASG also referred to Section 4 of the Unlawful Activities (Prevention) Act, 1967, which provides for publication and service or notice on such association and in such manner as the Central Government may think fit. The learned ASG also referred to Section 4(2) of the Act, especially emphasizing the word 'shall call upon the association affected by notice in writing to show cause'; and the words 'after calling for such further information as it may consider necessary from the Central Government or from any office bearer or member of the association', used in Section 4(3) of the Act to submit that it can only be an 'office bearer' or 'a member of the association' or the association itself, which can claim the right to be represented in the proceedings before the Tribunal constituted in terms of Section 4 of the Act. It is contended by the learned ASG that individuals, who may have had an association with the banned organization earlier and have since ceased to be associated or claim to have detached themselves from the association, cannot be permitted to be represented in these proceedings as is being sought to be contended by Mr. Aggarwal on behalf of Humam Ahmed Siddiqui and Misbah- Ul-Islam. It was also contended that alternatively, if one sees the reply filed by these two applicants and the line of cross-examination conducted by them, it will leave no manner of doubt that they are actively representing the banned organization itself.

30. The learned ASG also argued that the same applicants/intervenors had appeared before the previous Tribunal also, wherein on the plea of locus of these applicants/intervenors, the Hon'ble Tribunal had treated the objections/reply and cross-examination by the applicants/intervenors as objections and cross-examination for and on behalf of SIMI. Reference in this regard can be made to para 92 of the notification dated 12-8-2010.

31. Mr. Ashok Aggarwal, the learned counsel for the applicants/intervenors, on the other hand, submitted that the provisions of the Act expressly permit not only an office bearer or the member of the association but any person, who may claim to be 'aggrieved' by an order banning the organization to seek representation before the Tribunal. It was submitted that Misbah- Ul-Islam and H.A. Siddiqui are entitled, not only on the basis of their being

members of the organization prior to the first ban in September, 2001 but also on account of their being members of the Muslim community and thus being 'persons aggrieved' by the notification banning SIMI, are entitled to challenge the continuation of the ban in these proceedings and to cross-examine the witnesses being produced by the Central Government in support of the notification.

32. Mr. Aggarwal, learned counsel, in support of his contention that applicants/intervenors, H.A. Siddiqui and Misbah- Ul-Islam, would fall within the definition of 'aggrieved person' to seek participation in the proceedings before this Tribunal, relied upon the judgment in the case titled *Prafulla Samantra Vs. Ministry of Environment & Forest & Ors.*, 159 (2009) DLT 604.

33. The learned ASG while replying to this submission of Mr. Aggarwal contended that so far as the application for revocation of ban on the organization and the representation by any 'person aggrieved', as contemplated in Section 6(2) of the Act, is concerned, it refers to the post upholding of the ban by the Tribunal. In this regard he has drawn the attention of the Tribunal to the language of Section 6(2) of the Act.

34. It is argued by the learned ASG that their objection to the locus of the applicants stems from their denial of the alleged anti-national and secessionist activities attributable to the Association and its members. It is submitted that the applicants/intervenors must accept continuity of the organization and its activities to claim the right to participate in these proceedings. Referring to Section 41 of the Act, learned ASG argued that the existence of an Association does not come to an end merely on the issue of a Notification under Section 3(1) of the Act. The Association is deemed to continue to exist so long as any actual continuation for the purposes of such association continues between any members thereof. It is argued that SIMI has continued to indulge in anti-national activities, as is evidenced by the large number of cases registered against its members especially even after the last ban imposed on it and therefore, the applicants/intervenors must identify themselves as members of a continuing organization to claim the right to appear in these proceedings and cross-examine the witnesses and to further lead any evidence, which they might want, to oppose the notification issued under Section 3(1) of the Act.

35. The learned counsel for the applicants/ intervenors, on the other hand, has submitted that Misbah- Ul-Islam and H.A. Siddiqui are seeking participation in these proceedings as independent 'aggrieved persons' and they acquire this right from the explicit provisions of the Act and the principle of natural justice. It is further contended by him that the proceedings before the Tribunal are public proceedings and even the procedure adopted by the Tribunal invites public representation in support of or against the imposition of ban on the organization. It was contended that the continued ban affects the fundamental right of the petitioners to form an association under Article

19(1)(C) of the Constitution. He, thus, contends that the applicants'/ intervenors' right to be represented in these proceedings must be upheld.

**FINDING:**

36. I have carefully considered the submissions made by the respective sides. Section 3 of the Act clearly lays down that the Central Government on forming an opinion that any association is or has become an unlawful association has the discretion to notify in the Official Gazette, declaring such an association to be unlawful. Once this exercise is done, it has the option to submit the said Notification to the Tribunal constituted by it under Section 4(1) within a period of thirty days for the purpose of adjudication as to the correctness of its notification which, in legal jargon, is called 'sufficient cause' for banning the organization and it is only on the approval by the said Tribunal that the notification will have the effect. However, the Central Government also has the option to give immediate effect to the notification by invoking the proviso to Section 3(3) of the Act. Under Section 4(2) of the Act, the Tribunal, on receipt of a reference, is required to call upon the association by notice in writing to 'show cause' within a period of thirty days from the date of service of such notice as to why the association should not be declared unlawful. Section 4(3) of the Act lays down that after considering the cause shown by such association or the office-bearers or members thereof, the Tribunal shall hold an inquiry in the manner specified in Section 9 of the Act and after calling for such further information as it may consider necessary from the Central Government or from any office bearer or member of the association, it shall decide whether or not there is sufficient cause for declaring an association to be unlawful.

37. A plain reading of the aforesaid section would show that it is only the association, the office-bearers or the members of the association who have the 'locus' to show cause in response to the notice issued by the Tribunal.

38. The contention of Mr. Ashok Aggarwal that the words 'office bearers' or 'the members' would also include the ex-office bearers or the members thereof of the association which is sought to be banned or which has been banned is not at all plausible and convincing. This is on account of the fact that the foremost rule of interpretation of a statute is the 'literal rule'. The literal rule of interpretation is that if the legislature, in its wisdom, has passed a legislation, it should be read in the way it has been passed without adding or subtracting from the said statute or a provision thereof. Thus, a provision or a section must be interpreted literally in the first instance. If the literal interpretation leads to any ambiguity or any absurdity, only then the applicability of the other rules of interpretation would arise. In the instant case, in case Sections 4(2) and 4(3) of the Act are read literally, they do not admit of any ambiguity or absurdity. Therefore, there is no occasion to follow any rule other than literal interpretation so as to assume that the word 'office-bearers' or 'the members thereof' includes the ex office-bearers or the ex-members.

By doing this, the Tribunal would not only be doing violence to the Statute but would be adding something which was perhaps not intended by the legislature.

39. A perusal of Section 6 of the Act shows that the use of the term 'any person aggrieved' is in the context of post confirmation of the notification by the Tribunal. The said Section 6 reads as under:—

**"6. Period of operation and cancellation of notification.**

- (1) Subject to the provisions of sub-section (2), a notification issued under Section 3 shall, if the declaration made therein is confirmed by the Tribunal by an order made under Section 4, remain in force for a period of two years from the date on which the notification becomes effective.
- (2) Notwithstanding anything contained in sub-section (1), the Central Government may, either on its own motion or on the application of any person aggrieved, at any time, cancel the notification issued under Section 3, whether or not the declaration made therein has been confirmed by the Tribunal."

The jurisdiction under the aforesaid section to cancel the notification is vested in the Central Government and not with the Tribunal. Therefore, the word 'any person aggrieved' as used in Section 6 of the Act would not be controlling the interpretation of Section 4(3) so as to read the word 'office bearer' or 'the members thereof', to include ex-office bearers or the ex-members.

40. So far as the judgment in *Prabfulla Samantra (supra)*, cited by the learned counsel for the applicants/intervenors is concerned, it is of no assistance to them. The judgment is distinguishable on facts, in as much as it was considering the right of a private person to challenge an action of the Government in Public Interest Litigation in a writ petition, as compared to the case in hand, where a reference has been made to the statutory tribunal for determination of the sufficiency of material to issue the notification banning SIMI.

41. Accordingly, this contention of Mr. Aggarwal does not have any merit. Therefore, the two individuals represented by Mr. Aggarwal in their individual capacity, in my view, do not have any right to appear, participate and cross-examine the witnesses.

42. The aforesaid discussion, however, should not be interpreted to mean that the Tribunal does not have the power to permit any member of the public to participate in the proceedings in case it deems that it may help the Tribunal in deciding the question referred to it as to whether the validity of the notification should be upheld or not. This reasoning stems from the fact that the proceedings of the Tribunal in terms of sub-section (7) of Section 5 of the Act are judicial proceedings for deciding the list between the parties after recording of evidence, which requires appreciation of evidence. It has the powers of the Civil

Court under Sections 6 & 9 of the Act. It issues public notices inviting objections from the association and its office bearers and members to show cause as to why the ban be not continued. Therefore, in such circumstances it may permit desirous members to participate in the proceedings.

43. It would be appropriate at this stage to refer to Section 41 of the Act regarding continuance of an Association. The said Section reads as under :—

“41. Continuance of association - An association shall not be deemed to have ceased to exist by reason only of any formal act of its dissolution or change of name but shall be deemed to continue so long as any actual combination for the purposes of such association continues between any members thereof.”

44. A perusal of the aforesaid section shows that an association shall not be deemed to have ceased to exist only by a formal act of its dissolution or change of name but shall be deemed to continue so long as any actual combination for the purposes of such association continues between any members thereof. On the basis of the aforesaid submissions, Mr. Chandhok has contended that although SIMI as an organization has been banned in September, 2001 as having been declared unlawful association but still on ground it has been functioning surreptitiously through various frontal organizations for which evidence has been brought on record by the UOI.

45. The language of the provisions of the Act is drafted in such a manner that the Tribunal is required to see only the ‘sufficiency of the cause’ for the Central Government to declare the association to be unlawful and conversely, the onus is put on the association, either as a body of persons or as office-bearers or even as members, to show cause as to why it should not be declared as unlawful. Being former office-bearers of the association, they were permitted to cross-examine the witnesses and participate in the proceedings but if one examines the tone and the tenor of the objections/reply filed by them and the entire thread of cross-examination conducted for and on behalf of these two applicants/intervenors, it would clearly show that they were not cross-examining the witnesses in their individual capacities but, in effect, they are representing the banned organization itself. As a matter of fact, it is surrogate representation by them on behalf of the banned organization SIMI.

46. I find considerable merit in the submission of the learned ASG that the applicants/intervenors as individuals cannot be permitted to participate in the proceedings and cross examine the witnesses produced by the Central Government, but since this is a surrogate representation by them for the banned organization SIMI, they are allowed to participate in the proceedings as members of a ‘continuing organization’.

**(ii) Confessional Statements before Police Authorities**  
Another argument advanced by the learned counsel Mr. Aggarwal is that the primary evidence led before the

Tribunal by the UOI is the confessional statements recorded by the police officers while the accused persons were in their custody. In this regard he has referred to the testimony of PW-2, PW-6, PW-17, PW-27, PW-28, PW-29, PW-30, PW-31, PW-33, PW-35, PW-38, PW-40 & PW-41. It is contended by the learned counsel that such evidence is not admissible and is liable to be rejected by the Tribunal in view of Sections 25 & 26 of the Indian Evidence Act, 1872.

47. It is contended by the learned counsel that the term “as far as practicable” in Rule (3) of the Unlawful Activities (Prevention) Rules, 1968 must be read to mean strict adherence to the provisions of the Evidence Act and, thus, no sanctity can be attached to the confessional statements recorded by the police officers and that their statements be not entertained and relied upon by the Tribunal.

48. Elaborating this argument further, it was contended by him that the major component of evidence which has been produced by the Union of India is the statements/ confessions of the various accused persons recorded by the police officers or while the accused were in police custody and these confessions or so called disclosure statements have allegedly lead to various recoveries. It is contended that all these recoveries shown from the accused persons or at their behest are planted and fake recoveries. Further, merely because some recoveries have been effected from some accused persons does not establish the complicity of the organization SIMI. Another argument which was advanced was regarding the statements recorded under Section 161 Cr.P.C. It was contended that these statements are also inadmissible in evidence and they, at best, could be used for the purpose of the contradiction under Section 145 of the Evidence Act.

49. Sections 25 & 26 of the Indian Evidence Act, 1872, read as under :—

“25. Confessions to police officer not to be proved - No confession made to a police officer, shall be proved as against a person accused of any offence.

26. Confession by accused while in custody of police not to be proved against him - No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.”

50. Learned counsel referred to the decision of the Apex Court in Khatri & Ors. (IV) Vs. State of Bihar & Ors., (1981) 2 SCC 493 to contend that statements recorded before the police authorities can be considered in evidence under Section 162 of the Evidence Act only if they are otherwise relevant under the provisions of the Indian Evidence Act and since Sections 25 & 26 of the Indian Evidence Act render such statements inadmissible, the Tribunal should not entertain such statements while assessing the ‘sufficiency of cause’ shown by the Central Government. Learned counsel referred to the following observations of the Apex Court in Khatri’s case:-

"It is obvious, therefore, that even a statement made before a police officer during investigation can be produced and used in evidence in a writ petition under Article 32 provided it is relevant under the Indian Evidence Act and Section 162 cannot be urged as a bar against its production or use. The reports submitted by Shri L. V. Singh setting forth the result of his investigation cannot, in the circumstances, be shut out from being produced and considered in evidence under Section 162, even if they refer to any statements made before him and his associates during investigation, provided they are otherwise relevant under some provision of the Indian Evidence Act."

51. Learned counsel for the applicants/intervenors next submitted that the so-called confessional statements being relied upon by the Central Government for issuing the notification under Section 3(1) of the Act are carved by a threat of injury to the maker of the statement since the maker of the statement is at the mercy of the police officers. It is argued that confession carved by any inducement, threat or promise, proceeding from a person in authority is liable to be excluded from evidence and that the Tribunal while weighing the evidence should discard such statements. Learned counsel, in support of his arguments, referred to the following observations made by the Apex Court in State (NCT of Delhi) Vs. Navjot Sandhu, (2005) 11 SCC 600:—

".....If it appears to the court that the making of the confession was caused by any inducement, threat or promise proceeding from a person in authority, the confession is liable to be excluded from evidence. The expression "appears" connotes that the court need not go to the extent of holding that the threat, etc. has in fact been provided. If the facts and circumstances emerging from the evidence adduced make it reasonably probable that the confession could be the result of threat, inducement or pressure, the court will refrain from acting on such confession, even if it be a confession made to a Magistrate or a person other than a police officer. Confessions leading to discovery of a fact which is dealt with under Section 27 is an exception to the rule of exclusion of confession made by an accused in the custody of police officer. Consideration of a provided confession affecting the person making it as well as the co-accused is provided for by Section 30. Briefly and broadly, this is the scheme of the law of evidence vis-a-vis confessions. The allied provision which needs to be noticed at this juncture is Section 162 Cr.P.C. It prohibits the use of any statement made by any person to a police officer in the course of investigation for any purpose at any enquiry or trial in respect of any offence under investigation....."

52. Learned counsel also argued that the statements made before the police authorities do not inspire confidence and suffer from the vice of threat and coercion and thus inadmissible under Section 24 of the Evidence Act. Such

statements are, in most cases, retracted by the accused persons in court, which shows that they are not 'voluntary' in character. In support of the submissions, learned counsel referred to the observations of the Apex Court in *Tahsildar Singh Vs. State of U.P.*, AIR 1959 SC 1012:

"It is, therefore, seen that the object of the legislature throughout has been to exclude the statement of a witness made before the police during the investigation from being made use of at the trial for any purpose, and the amendments made from time to time were only intended to make clear the said object and to dispel the cloud cast on such intention."

53. Learned counsel Mr. Aggarwal contends that in view of the clear mandate of the law and the pronouncements of the Apex Court, the confessional statements made by the accused persons in particular cases, which are sought to be relied upon by the Union of India are not admissible in the present proceedings before the Tribunal for adjudicating the reference.

54. In reply, learned ASG, at the outset, referred to Rule 3(1) of the Unlawful Activities (Prevention) Rules, 1968, to submit that the rules of the Indian Evidence Act, 1872 are not applicable *stricto sensu* to the proceedings before this Tribunal and not more than 'as far as practicable'. It is submitted that the term 'as far as practicable' implies that the provisions of the statute do not apply to the proceedings in their entirety and must be interpreted loosely to examine the 'sufficiency of cause' for issue of the notification under Section 3(1) of the Act. In support of the submissions, learned ASG relied on the judgment of the High Court of Bombay in *Keshrimal Jivji Shah & Anr. Vs. Bank of Maharashtra & Ors.*, (2004) 122 Camp. Cases 831 (Bombay), wherein the Division Bench has observed as under:—

"Wherever legislature uses words such as 'as far as possible', 'as far as practicable' etc. the intent is not to apply the provisions in their entirety."

In this regard, learned ASG has also referred to the decision in *Abdul Majid Haji Mahomed Vs. P. R. Nayak*, AIR 1951 Bombay 440, wherein the Division Bench of the Bombay High Court in Para 27 of the judgment has observed that "as far as practicable" can only mean and must be construed to mean in to the extent that it is practicable".

55. Learned ASG also referred to Section 9 of the Act to contend that the words 'so far as may be' used in the said Section de-fetter the Tribunal from the provisions of the Civil Procedure Code and the Evidence Act and empower it to evolve its own procedure to assess the 'sufficiency of cause'. These provisions, it is argued, allow the Tribunal to modify, change and regulate its own procedure, keeping in view the practical requirements, need and necessity. Learned ASG, referring to Section 18 of the Indian Evidence Act, argued that statements whether confessional or made under Section 161 Cr.P.C. before the police authorities by members of the SIMI organization are admissions made on behalf of SIMI and are, therefore, admissible in view of the express language of Section 18.

56. It is further argued by the learned ASG that the appreciation of evidence by the Tribunal in a reference under the Act is not a 'trial' against the accused persons and the evidence led by the Central Government in these proceedings cannot form the basis in the trial proceedings. Therefore, the appreciation of evidence by the Tribunal being collative in nature and in view of the express provision of Section 18 of the Indian Evidence Act, 1872, this Tribunal can certainly examine and form its opinion to answer the reference on the basis, inter-alia, of confessional statements made by the accused persons before the police authorities while being in police custody.

#### FINDING :

57. The aforesaid arguments raise an issue as to what kind of evidence can possibly be admissible in respect of a banned organization, which is continuing to indulge in a surreptitious manner in anti-national activities and how far the strict rules of evidence can be read in this arena by the Tribunal to arrive at its opinion and to answer the reference. It also entails examination of the question of quantum of proof which the Tribunal is required to see for the purpose of answering the reference, as to whether there is 'sufficiency of cause' for continuation of ban. In this regard suffice it would be to here mention that this question is no more res integra. It has been settled by the Supreme Court that the inquiry before the Tribunal is only an 'inquiry' and not a trial, therefore the quantum of proof which will be required is only of preponderance of probability and not beyond reasonable doubt and secondly the evidence which may be taken into consideration by the Tribunal is not only the legal evidence but the other material also, which may be produced before the Tribunal. Reliance in this regard can be placed on Jamaat-e-Islami Hind's case (supra).

58. I have carefully considered the submissions made by the learned counsel and have gone through the judgments. I have also gone through the previous Notifications, especially the Notification dated 12-2-2010 issued by the Central Government, upholding the ban for a period of two years on the basis of the reference of the Notification No. S.O. 544(E) dated 5th March, 2010 issued by the Government of India, declaring SIMI as an Unlawful Association. It may be pertinent here to mention that once the Gazette Notification on the basis of the report of H.M.J. Sanjiv Khanna is issued, the said Notification has become a public document in pursuance to Section 74 of the Indian Evidence Act, 1872, which can be proved by resort to Section 78. Sections 74 and 78 read as under:

**"74. Public documents**—The following documents are public documents:—

- (I) documents forming the acts, or records of the acts—
  - (i) of the sovereign authority,
  - (ii) of official bodies and tribunals, and
  - (iii) of public officers, legislative, judicial and executive, of any part of India or of the Commonwealth, or of a foreign country;

- (2) public records kept in any State or private documents.

**78. Proof of other official documents**.—The following public documents may be proved as follows:—

- (I) Acts, orders or notifications of (the Central Government) in any of its departments, (or of the Crown Representative) or of any State Government or any department of any State Government—by the records of the departments, certified by the head of those departments respectively,

Or by any document purporting to be printed by order of any such Government (or, as the case may be, of the Crown Representative)".

59. A perusal of the aforesaid Sections would show that once a notification is issued and it is proved as established, this being a public document, the Tribunal, the Court or any other judicial body is entitled to take judicial notice of the said notification. Further, this notification has been proved by Ms. Rashmi Goel, Joint Secretary (HR), Ministry of Home Affairs. This Tribunal has taken judicial notice of the Notification dated 12-8-2010 issued by the Central Government, and it is noticed that the submissions, urged by Mr. Ashok Aggarwal before this Tribunal with regard to the relevancy and admissibility of the evidence in the context of confessions recorded by the police officers, hearsay evidence and the recoveries purported to have been effected in pursuance to Section 27 of the Indian Evidence Act, 1872, are almost a re-run of the submissions which were urged before the previous Tribunal. Hon'ble Mr. Justice Sanjiv Khanna had passed a detailed order dealing with each of these submissions as well as the judgments cited by the learned counsel. These are contained in paras 33 to 72 of the Notification dated 12-8-2010. Nothing new has been urged by the learned counsel. Therefore, I do not find myself, in any manner, being persuaded, so as to differ with the reasoning which has been arrived at by the said Tribunal. Suffice it would be here to mention that the fallacy with regard to the submissions made by Mr. Ashok Aggarwal can be illustrated by one simple point. Mr. Ashok Aggarwal has put too much of premium on the submission that a confession which is made by an accused to a police officer or, for that matter, while in police custody, is not admissible.

60. It is correct that Sections 25 & 26 of the Indian Evidence Act, 1872 lay down that the confessions made in certain contingencies are not admissible, but the bar is very clearly against the use of such confessions against the accused persons making such confessions during the course of its trial. A reading of the said two sections in conjunction with Section 18 makes such statements good enough as a material for reliance purposes of this Tribunal to assess the sufficiency of the cause. Even the case law cited by learned counsel for the applicants/intervenors, clearly recognizes this distinction between use of such statements against the accused persons and their use in

collateral proceedings. In the case of *Khatri & Ors.* (supra), the Apex Court has categorically held that statements before police officers during investigation cannot be shut out from being considered in evidence under Section 162, provided they are otherwise relevant under some provisions of the Indian Evidence Act. As observed earlier, this Tribunal is not restricted in its power to adopt its own procedure, so as to assess 'sufficiency of cause' by weighing of the evidence brought before it by a fair procedure.

61. Accordingly, I am of the considered opinion that the judgments which have been relied upon by Mr. Ashok Aggarwal, detailed hereinabove, are not applicable to the facts of the present case. In addition to this, there is another point of distinction on the basis of which the judgments, which have been relied upon by Mr. Ashok Aggarwal, can be ignored as not applicable to the facts of the present case. This reasoning is that although the judgments, which have been relied upon by Mr. Ashok Aggarwal, lay down certain points of law in the context of the facts reported therein but the Supreme Court has umpteen times laid down that while laying down the law in a particular case, the applicability of the said law to the case in hand should not be done in a mathematical manner, like as is done in the case of theorems. In such contingencies, the facts of the reported judgment must be correlated to the facts of the case in hand. The judgments, which have been relied upon by Mr. Ashok Aggarwal, are essentially dealing with the admissibility of confessions, the admissions, the statements made by the accused persons while in police custody, in the context of the criminal trial, while in the instant case, there is no such requirement and what has to be determined by the Tribunal is as to whether there is sufficiency of material to confirm the ban or not. Reliance in this regard can be placed on *Haryana Financial Corporation Vs. Jagdamba Oil Mills*, 2002 (3) SCC 496 and *Sushil Suri Vs. CBI & Anr.*, AIR 2011 SC 1713.

Accordingly, the plea of the applicants/intervenors to disregard evidence brought on record by way of confessional statements or statement made to police officer under Section 161 Cr. P.C. is rejected.

### (III) Claim of Privilege by Union of India (I.A. No. 12/2012)

Another contention raised by Mr. Ashok Aggarwal, learned counsel representing the applicants/intervenors, is that the Central Government cannot claim any privilege with respect to the evidence adduced before the Tribunal by way of documents placed in a sealed envelope. It is submitted that either the contents of the sealed documents be disclosed to the applicants/intervenors or the Tribunal should disregard all such evidence produced before the Tribunal during its sittings in different States and by the Central Government at Delhi. In this behalf, the applicants/intervenors have also filed IA No. 12/2012, objecting to the manner in which the privilege is claimed by the Central Government and seeking directions that the Central Government must file affidavits, clearly stating the nature

of each of the documents on which privilege is claimed as also the grounds for seeking non-disclosure of such information to the applicants/intervenors. The learned counsel claims that such withholding of information placed before the Tribunal from the applicants/intervenors amounts to violation of the principles of natural justice and also their right to challenge all such material to oppose the notification issued under Section 3(1) of the Act. It is argued that the alibi of public interest to withhold disclosure of information to the applicants/intervenors amounts to jeopardizing their right to effectively participate and contest the proceedings on behalf of the applicants/intervenors. Referring to the decision of the Supreme Court in *Jamaat-e-Islami Hind* (supra), it is submitted that the affected association or those who represent it before the Tribunal, are entitled to a copy of the entire material, based on which the Central Government is purported to have formed its opinion to ban the said organization, except to the extent it intends to claim privilege, in order to give the affected party a proper opportunity to show cause against the same. Reliance is also placed on the decision of the Apex Court in *Sudhir Kumar Vs. State of Punjab*, AIR 1961 SC 493 to submit that each claim of privilege must be founded upon an affidavit, clearly stating the nature of the documents and the grounds for seeking non-disclosure. It is submitted that the claim of privilege cannot even be considered, much less granted, unless the prescribed procedure is followed.

62. It is argued by the learned counsel that any privilege, which is to be claimed by the Union of India, has to be done in accordance with the provisions of Section 123 of the Indian Evidence Act, 1872. In other words, it was contended that the mode of claiming the privilege is prescribed in Section 123 of the Evidence Act, 1872 itself. This plea was raised by the learned counsel in the context of the fact that at a number of places where the Tribunal had gone for the purpose of recording of evidence, the witnesses or the high officials of the state concerned had handed over sealed envelopes for the purpose of perusal by the Tribunal to satisfy itself regarding the 'sufficiency of cause' for the continuation of the ban.

63. It will be pertinent here to reproduce Section 123 of the Indian Evidence Act, 1872, which reads as under:

**"123. Evidence as to affairs of State.—**No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit."

The learned counsel also sought to rely on Section 162 of the Indian Evidence Act, 1872 to support his argument for disclosure of all documents.

64. On the strength of the aforesaid statutory provisions of the Evidence Act, Mr. Aggarwal has referred to paragraph 15 & 17 of judgment of the Apex Court in *R.K. Jain Vs. Union of India & Ors.*, AIR 1993 SC 1769 to contend that

before any privilege is claimed by the UOI, not only there has to be an application, but there has to be an affidavit by the Head of the Department, stating therein that the disclosure of the contents of the document or the document itself to the opposite side would not be in public interest. Learned counsel laid emphasis on the following observations of the Supreme Court:—

“.....It is now settled law that the initial claim for public interest immunity to produce unpublished official records for short 'State documents' should be made through an affidavit generally by the Minister concerned, in his absence by the Secretary of the department or head of the department. In the latter case the court require an affidavit of the Minister himself to be filed. The affidavit should indicate that the documents in question have been carefully read and considered and the deponent has been satisfied, supported by reasons or grounds valid and germane, as to why it is apprehended that public interest would be injured by disclosure of the document summoned or called for.....”

65. Since in the instant case, it was contended that neither the application nor the affidavit of the Head of the Department has been filed, therefore, no privilege can be granted or can be claimed by the UOI in respect of the documents which are given at different hearings in a sealed cover. Mr. Aggarwal also referred to S. P. Gupta Vs. Union of India & Ors., AIR 1982 SC 149 to make a similar submission.

66. As against this, Mr. Chandhiok, the learned ASG, has contended that neither an application nor an affidavit is required to be filed for claiming privilege. It was contended that proviso to Section 3(2) makes it amply clear that the Central Government is empowered not to disclose any fact which it considers to be against public interest to disclose, meaning thereby, that if the Central Government is of the opinion that the disclosure of any fact to the banned organization or to any of its members, or for that matter to the public in general will be against public interest, it can withhold its disclosure. The language of the section is couched, it was contended, in such a manner which does not entertain any doubt that any application or any affidavit by any competent authority is required to be filed to claim privilege.

67. It was also observed that this information could not and ought not to be disclosed to the respondents because apart from the source of information being leaked it would also jeopardize the life and property of certain witnesses or individuals. So far as Section 162 of the Evidence Act is concerned, it was contended that the same does not apply to the facts of the case at all.

68. I have carefully considered the submissions made by Mr. Ashok Aggarwal as well as Mr. A.S. Chandhiok.

69. Section 5(6) of the Act gives the powers to the Tribunal for the purpose of making an inquiry under this Act in order to answer the reference made to the Tribunal

under Section 4 of the Act. Sub-section (6) of Section 5 reads as under:—

“5. Tribunal.—

(6) The Tribunal shall, for the purpose of making an inquiry under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:—

- the summoning and enforcing the attendance of any witness and examining him on oath;
- the discovery and production of any document or other material object producible as evidence;
- the reception of evidence on affidavits;
- the requisitioning of any public record from any court or office;
- the issuing of any commission for the examination of witnesses.”

Rule 3(2) of the *Unlawful Activities (Prevention)* Rules, 1968 lays down as under:—

“3. Tribunal and District Judge to follow rules of evidence,—

[(2) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), where any books of account or other documents have been produced before the Tribunal or the Court of the District Judge by the Central Government and such books of account or other documents are claimed by that Government to be of a confidential nature then, the Tribunal or the Court of the District Judge, as the case may be, shall not,—

- make such books of account or other documents a part of the records of the proceedings before it; or
- allow inspection of, or grant a copy of, the whole of or any extract from, such books of account or other documents by or to any person other than a party to the proceedings before it.]”

70. A perusal of the aforesaid Section and Rule clearly shows that although the principles of the Indian Evidence Act, 1872 are made applicable for admissibility and relevancy of evidence produced before the Tribunal adjudicating the reference under the Act, but the same are not applicable in *stricto sensu*. What is to be followed are the broad principles of evidence which are conforming to the principles of natural justice and fair play.

71. Thus, there is a certain amount of laxity and departure made under the Act for the reason that the provisions of the Act are extraordinary and preventive in nature. The preamble of the Act clearly states that the Act has been passed by way of a special enactment for effective prevention of certain unlawful activities of individuals and associations as well as dealing with terrorist activities and for the matters connected therewith. The statement of

objects and reasons underlines the purpose of the enactment empowering Parliament to impose, by law, reasonable restrictions in the interest of the sovereignty and integrity of India, on the freedom of speech and expression; right to assemble peacefully and without arms; and right to form association. In addition to this, if these two provisions are seen in the proper perspective, it will give an impression that the provisions of the Act, which are passed at a later point of time, are laying down its own procedure for the purpose of taking evidence in order to determine the sufficiency of grounds for upholding the ban. It is in this context that the power has also been given to the Union of India to withhold the information or material from the aggrieved party. Although it has to be given to the Tribunal to show and determine the objectivity of its decision. This procedure does not call for any affidavit by the Head of the Department. This provision is also at variance with Section 123 of the Evidence Act.

72. It is settled law of interpretation that where the special Act is passed and prescribed as special procedure under the said Act itself, then that procedure has to necessarily supersede the general provision of law or the general act if it deals in the same field. Reliance in this regard can be placed on the Latin maxim *generalia specialibus non derogant*.

73. It would be pertinent at this stage to notice the observations made by the Supreme Court in *Jamaat-e-Islami Hind (Supra)* on the issue of non-disclosure of information by the Central Government in public interest. In para 20 of the judgment, the Apex Court has observed as under:—

“..... The requirement of natural justice in a case of this kind must be tailored to safeguard public interest which must always outweigh every lesser interest. Thus, subject to the non-disclosure of information which the Central Government considers to be against the public interest to disclose all information and evidence relied on by the Central Government to support the declaration made by it of an association to be unlawful, has to be disclosed to the association to enable it to show cause against the same. Subject to the requirement of public interest which must undoubtedly outweigh the interest of the association and its members, the ordinary rules of evidence and requirement of natural justice must be followed by the Tribunal in making the adjudication under the Act.”

Thus, it may be noticed that principles of natural justice must remain subservient to public interest, so far as disclosure of secret and confidential information is concerned.

74. In the light of the aforesaid discussion, I hold that neither any application for seeking privilege nor any affidavit of the Head of the Department is required to be filed by the Union of India for grant of the privilege by the Tribunal. The judgments which have been relied upon by the learned counsel Mr. Aggarwal are distinguishable on

facts and do not lay down that sensitive information cannot be withheld from the parties to a lis. So far as Section 162 of the Indian Evidence Act, 1872 is concerned, that is not applicable to the facts of the case, as it deals with altogether a different situation.

#### SEALED ENVELOPES:

75. During the course of proceedings of the Tribunal, 8 sealed envelopes were submitted at Kerala, Udaipur, Kolkata, Mumbai, Jabalpur, Ahmedabad, Hyderabad and Indore. Apart from these, PW-42, Ms. Rashmi Goel, appeared as a witness on behalf of the Union of India and handed over 9 sealed envelopes. I have perused the contents of all these sealed envelopes, except for the sealed envelope which has been given at Ahmedabad, which contains the documents only in Gujarati, without any English translation, could not be perused by the Tribunal. The Tribunal also did not consider it to be necessary to get the documents translated on account of paucity of time.

76. After perusing the information which has been furnished in the form of CDs, VCDs, audio CD, pamphlets, book, magazine and literature, I am further satisfied that the information, which has been furnished to this Tribunal in the sealed envelopes, is sensitive information which cannot be disclosed to the applicants, as it will derail not only the investigations of the cases, which are going on, but will also disclose to them the various sources of information and may even threaten the life and liberty or even property of such witnesses who have furnished the said information. Apart from this, these pieces of information, if perused by any reasonable law knowing person, he would be left with no manner of doubt in his mind that the organization in question has been banned in September, 2001 but in reality, its ex-office bearers, activists and sympathisers are trying all their efforts to regroup, recruit and indoctrinate the techno savvy young persons with impressionable age to indulge in illegal and unlawful activity within the definition of Section 2(o) and 2(p) of the Act.

Accordingly, the application I.A. 12/2012 of the applicants, Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul- Islam, seeking directions that the Central Government must file affidavits, clearly stating the nature of each of the documents on which privilege is claimed as also the grounds for seeking non-disclosure of such information to the applicants/intervenors, is rejected.

#### Individual Actions cannot be attributed to the Association already Banned

77. Another argument advanced by learned counsel for the applicants/intervenors is that the incidents relied upon by the Central Government in support of the Notification banning SIMI are at best individual incidents of crime and have no relation whatsoever with the banned organization. It is further argued that the ban on the organization is in violation of their right to form association as enshrined in Articles 19(1)(c) of the Constitution of India. He has submitted that the individual cases of crime are being tried

in courts of competent jurisdiction and such cases have no relation whatsoever with the organization.

78. The aforesaid argument of the learned counsel will need to be tested on three counts, viz., (i) whether the incidents/crimes are of such nature which are capable of being committed without support from the organization of which they claim to be members; (ii) whether the incidents/crimes are isolated in nature or are a part of a larger web being created, which is aimed at causing terror and destabilization of the State; and (iii) whether the association has at the first available opportunity delineated itself from such incidents by publicly disassociating itself from the incidents/crimes.

79. Learned ASG in this connection has once again referred to the definition of 'unlawful activity' as contained in Section 2(o) of the Unlawful Activities (Prevention) Act, 1967, which provides that an unlawful activity, in relation to an individual or an association, means any action taken by such individual or association which is intended or supports any claim to bring about on any ground whatsoever the cession or the secession of a part of the territory of India from the Union or which incites any individual or group of individuals to bring about such cession or secession; or which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or which causes or is intended to cause disaffection against India. Learned counsel argued that on a mere literal interpretation of the definition of the term 'unlawful activity', the argument advanced by learned counsel for the applicants/intervenors must fail.

80. It is submitted that the aforesaid definition does not draw any distinction between an Association and its members and both are equally responsible for the acts of crime and anti-national activity committed by the members. It is submitted that an Association is nothing but a group of people with common objectives and, as such, the acts of the members, committed in pursuance of their common objectives, represent the acts of the Association and no one else. It is further argued that the Association cannot be permitted to adopt the convenient alibi of disassociating itself from any member who is caught in an act covered within the definition of unlawful activity.

81. A literal reading of the definition of 'unlawful activity' in the Unlawful Activities (Prevention) Act, 1967 coupled with the examination of the evidence which has been brought on record and the documents made available to the Tribunal under sealed cover lead to the conclusion that these incidents are carried out surreptitiously, as a part of a larger well-planned conspiracy, to carry out terror related activities in the name of Jehad by members of the organization even though their outward claim may be that the organization has ceased to exist after September, 2001 and there are no activities carried out by their cadres which can be attributed to the organization. Furthermore, these incidents brought on record during the examination of witnesses cannot be termed as isolated incidents of crime. There are proved interlinks and linkages between the

different incidents, which establish the commonality of purpose of each of the incidents and are aimed at achieving the specified objects of the Association. Further, nothing has been brought on record to show that the Association has at any point of time or at any stage made any effort to disown itself from such acts.

Thus, on all the three counts, the argument advanced by the learned counsel for the applicants/intervenors must fail and is accordingly rejected.

#### PROCEEDING TO THE EVIDENCE BROUGHT ON RECORD

82. A brief analysis of the evidence recorded in each of the States is as under :

##### (I) At Trivandrum in Kerala :

At Trivandrum, the Central Government, in support of the Notification banning SIMI, examined the following witnesses :—

- (i) Mr. Lhari Dorjee Lhatoo, Superintendent of Police, National Investigation Agency, New Delhi (PW-1);
- (ii) Mr. Sajid Farid Shapoo, IPS, Superintendent of Police, National Investigation Agency, New Delhi (PW-2);
- (iii) Mr. G.V. Ramana, Deputy Superintendent of Police, NIA, Field Office, Hyderabad (PW-3);
- (iv) Mr. Sasidharan Chalil, Additional Sub-Inspector in Town Police Station at Kozhikode (PW-4);
- (v) Mr. Aananthakrishnan, IGP(Internal Security), Special Branch, CID Hqrs. Govt. of Kerala (PW-5).

83(a). PW-1, Mr. Lhari Dorjee Lhatoo, Superintendent of Police, National Investigation Agency, New Delhi, has filed two affidavits exhibited as Ex. PW-1/A and PW-1/B. Along with his affidavit (Ex. PW-1/A), he has filed a certified copy of the FIR No. 159/2006 and its English translation (exhibit PW-1/1). He has stated that the said FIR was registered by PS Binanipuram, Distt. Ernakulam, Kerala under Sections 120(B), 124(A) IPC and Sections 10 & 13 of Unlawful Activities (Prevention) Act against five SIMI activists, who are accused of conducting a secret seditious meeting at the Happy Auditorium, Binanipuram PS Limits, Ernakulam Distt., which was attended by 13 other persons, who were also arrested by a Joint Investigation team. The investigation of the FIR was subsequently transferred to National Investigation Agency (NIA), which re-registered the said FIR as FIR No. 3/2010 on 21-1-2010 (Ex. PW-11).

(b) The NIA further investigated the matter and filed the charge sheet on 30-12-2010 (Ex. PW-1/2). This has been wrongly stated by the witness in his affidavit as 30-12-2012. During the course of investigation by the NIA, the witness got the statement of Rasheed @ Rasheed Moulavi recorded under Section 164 Cr.P.C. The statement of Rasheed @ Rasheed Moulavi recorded under Section 164 of Cr.P.C. [Ex. PW-1/3 (colly)] has been placed on record. In his

examination-in-chief, he has stated that Rasheed was originally the complainant but when the investigation of the case was transferred from one IO to another of the state police itself, he was made an accused and after the investigations were transferred to NIA, he turned as an approver. In his statement, he has stated that in 2006 during the period when the FIR in question was registered, he was acquainted with one Nizamuddin of Panaykulam who used to visit mosques for prayer. He used to lend CDs and Islamic religious books from the mosque library. One week before 15-8-2006, Nizamudeen told him that a meeting was going to be organized at Happy Auditorium in Panaykulam on 15-8-2006 and in the said meeting, the role of Indian Muslims in the freedom struggle was being discussed. The aforesaid meeting was attended by Nizamudeen, Abdul Rasik, P.A. Shaduly, Shammi @ Shammas and Ansar who were sitting in the Dias. There were 13 persons, including him, who were sitting in the audience. After reciting Quran by Ansar, Abdul Rasik took a class on history of Kashmir. Abdul Rasik said that Kashmiri Muslims were conducting Jihad and that they were being shot dead by Indian soldiers. The Government of India had also been torturing Muslims with black laws, like TADA and NSA. He also asked the gathering to fight against these atrocities under the leadership of SIMI. He is also alleged to have stated that these activities cannot be eradicated. They were also in possession of certain books and pamphlets, which, on a visit by Police to the area in question, were hidden by each one of them. This statement was recorded on 4-4-2010.

(c) Statements of Ubaid, S/o Abdul Rashid, Shihab S/o Ibrahim, Mohd. Sherref, S/o Abdul Kader, Shabeer S/o Abdul Khader have also been recorded under Section 161 Cr.P.C. by the police officials, wherein it is reflected that the activities of SIMI are being carried out by the persons belonging to Muslim community living in Kerala, either under the banner of SIMI surreptitiously or under the name of Students Islamic Organization (SIO), a student's wing of Jamaat-e-Islami Hind (JIH). The statements of other accused filed by PW-1 are exhibited as Ex. PW-1/4 to PW-1/15. Certified copies of the publications of the banned organization are exhibited as Ex. PW-1/16 and the certified copy of the list of leaders/members/workers of the organization are exhibited as Ex. PW-1/17.

(d) In his cross examination by Mr. Mobin Akhtar, Advocate representing H.A. Siddiqui and Misbah-Ul-Islam, PW-1 admitted that Rashid @ Rashid Maulvi was made an accused on 31-12-2008, on which date he was arrested by the previous investigating officer.

He further stated that he had not filed the entire documents in this Tribunal forming part of the charge sheet but volunteered that the documents which were considered relevant were filed by him. He also admitted that in FIR No. 3/2010, which is registered by NIA, there is no mention that the accused persons were making speeches against the Government of India. He further admitted in his cross-examination that no other statements of the accused have been recorded under Section 164 Cr.P.C. except that of Rashid Maulvi. He further stated that at the time of search and raid, various written material by way of pamphlets and literature etc. were recovered belonging to the organization concerned.

(e) A perusal of the testimony of this witness PW-1 highlights 2-3 important facts as his testimony is not demolished on that score by the cross-examination. The fact, which has come out from the testimony of this witness, is that though FIR No. 3/10 (Ex. PW-1/1) pertained to an incident of the year 2006, the investigations, were carried out by the NIA after transfer of the investigation in question to them, which revealed the deep-rooted hurt of young disgruntled Muslim youth in harbouring a grudge to carry out a struggle and help spreading hatred among different communities and create communal disharmony among the members of various communities in the name of a particular religion. It is also reflected that they wanted to support the so-called freedom struggle by carrying out similar extremist activities in the State of Jammu & Kashmir which they were terming as 'Jehad'. It also showed that most of these persons, who were involved in the said FIR, were either very young or middle aged persons, who seemed to be well educated.

(f) This clearly shows that even after the investigation of the case was transferred to the NIA, the activities of the banned organization SIMI were still being carried on by spreading seditious material by way of pamphlets, books and distributing CDs etc. It may be pertinent here to mention that the witness has also testified with regard to the seizure of various incriminating CDs, pamphlets and books which showed that the Muslim youths in Kashmir were conducting freedom struggle by way of Jehad against the alleged forcible annexation of that part to the Indian Union. In this regard, in one of the CDs, it is attributed that Pt. Nehru had refused to send the Indian Army on account of raid by nomadic tribes at the instance of Pakistan Army for a period of 44 days, as there was no annexation by them and Kashmir used to be an independent princely State. This kind of thinking on the part of the accused persons is nothing but the byproduct of their perverted mind.

84(a). PW-2, Mr. Sajid Farid Shapoo" Superintendent of Police, National Investigation Agency, New Delhi, has filed his affidavit exhibited as Ex. PW-2/A. Along with his affidavit, he has filed a certified copy of the FIR No. 356/2008 and its English translation (exhibit PW-2/1). He has stated that the S.I. of Police Station Edakkad arrested Abdul Jaleel on the basis of reliable information pertaining to some illegal activities and FIR 356/2008 was registered against him under Sections 3 and 13(2) of Unlawful Activities (Prevention) Act, which were subsequently altered into Section 3 read with Sections 13(2), 16, 18, 19, 38, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967 and Sections 120(B), 121, 121(A), 124(A), 465, 471 and 34 of IPC. The said case was investigated by a Joint Investigation team headed by Sh. T.K. Vinod Kumar, then DIG, State of Kerala and during the course of investigation 23 persons were arraigned as accused out of which 4 had been killed in an encounter with security forces while attending a camp for training in Kashmir. On the basis of investigation in FIR 356/2008, two charge sheets were filed by the Kerala police in the competent court of Jurisdiction. Later on, seeing the gravity of the offence, the investigation of the FIR was transferred to National Investigation Agency (NIA) on 24-12-2009, which re-registered the said case as FIR No. 2/2010 on 21-1-2010 (Ex. PW-2/2).

- b) The NIA further investigated the matter and filed the supplementary charge sheet before the Special Court for NIA cases (Ex. PW-2/3) against 24 accused persons, including 23 accused already charge sheeted by the Kerala Police. During the course of investigation, it has been revealed that one of the accused namely, Sarfaraz Nawaz, was a SIMI activist and his statement was recorded under Section 161 of Cr.P.C. by PW-2, which is exhibited as Ex. PW-2/4. The witness in his affidavit has further stated that it was further learnt that Sarfaraz Nawaz was also associated with Lashkar-e-Taiba and arranged funds for training of the other accused at Jammu & Kashmir and also assisted in the escape of two accused namely, Naseer and Sharfas from India in October/ November, 2008.
- c) He has stated that during the course of investigation and interrogation of Sarfaraz, it was revealed to him that Safdar Nagori, after being appointed as the New Secretary General, wanted to change SIMI into a full-fledged Jehadi group. Sarfaraz also met SIMI members in Dubai and started taking part in their activities. Apart from taking part in the activities of SIMI between 2004 and 2006, the witness also stated that the banned organization SIMI was recruiting people from the State of Kerala, indoctrinating them and sending them for waging war against the

Government of India and indulging in other terrorist acts in the State of Jammu & Kashmir. Out of these accused persons, four had got killed in an encounter in Srinagar while carrying out terrorist activities when they were confronted by security forces and cases have been registered in Police Stations, Lal Pura and Sogaon. He has also stated that SIMI and its members continued to indulge in anti-national activities, prejudicial to the interest of our national integrity, communal harmony and sovereignty by waging a war against the Government of India and, therefore, the ban, which is imposed by the Government on SIMI, is legally justified and is required to be upheld in the public interest so as to control its activities.

(d) In his cross examination by Mr. Mobin Akhtar, Advocate, PW-2 admitted that he was not the first investigating officer of FIR 2/2010 and volunteered that there was another investigating officer assigned for this FIR before him. He further admitted that the statement of Sarfaraz Nawaz had already been recorded earlier by the Kerala Police and that both the statements, one which is recorded by Kerala Police and the other recorded by him are almost on the same lines. He further admitted that the statement of Sarfaraz Nawaz was recorded by him when he was in judicial custody after taking permission from the concerned Magistrate and that the statements of most of the accused persons have been recorded but he denied the suggestion of the learned counsel that these statements have not been filed purposely, as it would have exposed that Sarfaraz Nawaz has no connection with SIMI. He admitted that he had not filed the complete record of the charge sheet but volunteered that whatever was relevant for the purpose of the present case was filed by him.

(e) One noticeable fact of the entire statement of this witness is that it has withstood successfully the test of cross-examination. Nothing has been brought on record during cross-examination which could discredit his testimony on the aspect of involvement of banned organization SIMI, which is surreptitiously indulging in anti-national terrorist activities through its members, not only in the State of Kerala, but also lending active support to such illegal activities being carried out by the militants in the State of Jammu & Kashmir. He has also testified that the ban against this organization deserves to be continued in the light of their activities. The testimony of this witness assumes great importance because he is a Muslim and hails from the State of Jammu & Kashmir and yet he has testified against the illegal and unlawful activities of disgruntled persons who are misguided and carry on the activities of the banned organization SIMI in the name of religion in the name of Jihad in the State of Jammu & Kashmir.

85(a). PW-3, Mr. G. V. Ramana, Deputy Superintendent of Police, National Investigation Agency, New Delhi, has filed his affidavit exhibited as Ex. PW-3/A. Along with his affidavit, he has filed a certified copy of the FIR No. 257/2008 and its English translation (exhibit PW-3/1). He has stated that the said FIR was registered at PS Mundakayam, Distt. Kottayam, Kerala under Sections 120(B), 124(A), 122, 153(A) IPC, Sections 25 & 27 of Arms Act and Sections 10 & 13 of Unlawful Activities (Prevention) Act based on the complaint by Mr. R. K. Krishna Kumar, Dy. Superintendent of Police (Internal Security), Special Branch, CID, Ernakulam, who noticed the word 'SIMI' written on a rock both in English and Malayalam near Shaikh Farudeen Dargah on the Kolahalmedu-Thangalpara route and on making a confidential enquiry, found that 30 activists/members of SIMI organization conducted a training camp at Thangalpara (Wagamon) in December, 2007. The investigation of the FIR was subsequently transferred to National Investigation Agency (NIA), which re-registered the said case as FIR No. 4/2010 on 21-1-2010 (Ex. PW-3/1).

(b) During the course of investigation by NIA, it has been revealed that three days' secret training camp of SIMI was conducted in a meticulous manner with each member entrusted with specific task and responsibility. The trainees were imparted vigorous physical training such as rock climbing, swimming, use of fire arms, making of petrol bombs; riding motor cycles at great speed for VIP assassinations, trekking in difficult terrain and methodologies for launching terrorist strikes. The NIA further investigated the matter and filed the charge sheet on 13-1-2011 against 30 accused persons, out of which 29 accused were arrested (Ex. PW-3/2). Along with his affidavit, the witness has filed the statements of various persons including the statements of (i) Mr. P. K. Krishna, complainant; (ii) Smt. Beena, a PCO booth operator from where the accused persons in FIR had allegedly made telephone calls; (iii) Vinesh V.K., who had made the arrangement of a Scorpio vehicle (KL 7 AP 4655) for transportation of the accused persons as well as the explosive material; (iv) Sajan K. Poulouse, an authorized arms dealer from whom the accused persons purchased 2 Air Guns and 2 packets of pellets for the purpose of target practice; (v) Raju G., who is an employee of a Guest House by the name of Sri Hari Tourist Home, where the accused persons stayed after the camp at Wagamon; (vi) Sh. P.J. Girwasis, Scientific Assistance, FSL, Thiruvananthapuram, who had examined the material objects from the place of occurrence as well as the vehicle for the purpose of expert opinion; and (vii) Sh. V. K. Bhadran, Addl. Director, Cyber Forensic Division, who had examined the laptop, the CDs and other connected material objects which were seized at the instance of the accused persons, which contained information and data pertaining to running of Wagamon training camp by the accused persons. All these statements are exhibited as Ex. PW-3/3 to PW-3/15. The witness has also annexed three reports of FSL, Thiruvananthapuram, about examination of fired projectile and gunshot residue

from the scene and the same are exhibited as Ex. PW-3/16 to PW-3/18.

(c) In his cross examination by Mr. Mobin Akhtar, Advocate, PW-2 admitted that the camp at Wagamon was held from 10th to 12th December, 2007 and volunteered that on account of an inadvertent mistake in his cross-examination, he stated that the training camp was held from 10th to 13th December, 2007. He further admitted that as a part of further investigation, he had arrested four accused persons. He also admitted that he had visited Wagamon, as an investigating officer. Wagamon is a tourist place, surrounded by hillocks, and is quite popular generally visited by persons for adventure sports like Para Gliding, Mountaineering, Rock Climbing, Trekking etc. He also admitted that the training camp held was approximately 5 kms. from the entrance. The site cannot be seen from the entrance but the thoroughfare of the camp can be looked at from the gate. He further admitted that he does not know whether SIMI can be the name of a person but is aware that there is an actress by the name of 'Simi Grewal'. On being asked by the Tribunal, he stated that mere use of word 'SIMI' indicated 'Students Islamic Movement of India'. He further admitted that FIR No. 257/2008 was registered after about 6 months of the incident. He also stated that no separate action was taken against the owner of the vehicle, which was involved in the incident, since he was already made an accused for transportation of the accused persons as well as the explosive material. The witness further stated that his basis for stating that the accused persons are connected with SIMI is based on the facts namely seizure of computer, hard disk, data, explosive and other connected material during the course of investigation in the aforesaid FIRs. He denied the suggestion of the learned counsel that he did not produce the hard disk before the Tribunal as there is none and volunteered that the statement of V. K. Bhadran, Scientific Expert, along with his report, have already been submitted by him along with his affidavit.

86(a). PW-4, Mr. Sasidharan Chalil, Additional Sub-Inspector in Town Police Station, Kozhikode, proved his affidavit Ex. PW-4/A. Along with his affidavit, he has annexed a copy of the FIR No. 448/2010 and its English translation (exhibit PW-4/5). He has stated that the said FIR was registered by PS Kozhikode under Sections 120(B), 124(A) IPC and Sections 10 & 13 of Unlawful Activities (Prevention) Act, 1967 in respect of a raid conducted at Nanma Books, which is a book shop of a Trust. During the raid, certain books and other publications as also a Hard Disk containing statements questioning the secular values of India as a Nation besides other matter inciting disaffection towards certain religions and thus capable of creating communal disharmony were found and seized. The relevant extracts of the books in Malayalam along with their English translation have been annexed along with his affidavit and are exhibited as Ex. PW-4/2 to PW-4/5. The witness in his affidavit has stated that C.A. Mahin, an activist of ISA (Islamic Students Association), a cover/front organization of SIMI, is running the book stall namely Nanma Books as

Manager, which is learnt to be owned by a Trust consisting of persons who are activists of MRW (Minority Rights Watch), which is another cover organization of SIMI. The witness has also annexed the statements of Subair, who was present at the time of search at Nanma Books; and Abdul Rahim, who is a tenant and has further let-out the store by the name of Nanma Books, along with their English translation, which are exhibited as Ex. PW-4/7 & 8. He has also annexed a copy of FIR No. 424/2010 registered by PS Kozhikode and its English translation which are Ex. PW-4/9. The said FIR was registered on account of a raid conducted on a book store namely 'Other Books'. The search list and its English translation in respect of FIR No. 424/2010 is exhibited as PW-4/10 and the forwarding note/letter to PSL enclosing therewith the hard disk seized as a consequence of FIR No. 424/2010 is Ex. PW-4/11.

(b) In his cross examination by Mr. Mobin Akhtar, Advocate, PW-4 admitted that he was not a member of the raiding party of either of the two raids conducted in pursuance to both the FIRs. He also admitted that three kinds of books were seized and in total 121 books were seized by the local police and that he had read a copy of each book when he had taken over the investigation of the case. He further admitted that out of the three books, which have been seized, only one contains the word 'SIMI'. He further admitted that Islamic Students Association (ISA) and Minority Rights Watch (MRW) are not banned organizations and he was not aware of the office of the organization. He also admitted that he had never registered any case against Islamic Students Association and Minority Rights Watch.

(c) An examination of the evidence of PW-4 shows that the witness has withstood the test of cross-examination and one thing highlighted from his testimony is that even though the books which have been seized do not contain material pertaining to SIMI but the activities of the organization are being carried on with the help of frontal organizations like Islamic Students Association and Minority Rights Watch.

87(a). PW-5, Mr. Aananthakrishnan, IGP (Internal Security), Special Branch, CID Headquarters, Government of Kerala, proved his affidavit as Ex. PW-5/A. Being the Nodal Officer, he along with his affidavit, has attached the documents which are exhibited as Ex. PW-5/I to PW-5/II in the same *seriatim* as have been exhibited in the testimony of PW-4, Mr. Sasidharan Chalil. He also handed over a sealed envelope, claiming privilege in respect of the contents of the envelope on the ground that it contained secret and confidential information, which could not be disclosed to the applicants/intervenors. (b) In his cross examination by Mr. Mobin Akhtar, Advocate, PW-5 admitted that FIR Nos. 448/2010 & 424/2010 are still under investigation. He further admitted that he did not make any reference to the Government of Kerala for banning the books in question in pursuance of Sections 94 & 95 Cr.P.C. but volunteered that the material which was seized was sufficient to cause disharmony amongst the members of

different communities. He stated that the offending books have reference to the banned organization SIMI at number of places. He admitted that the book 'Islam and Nationalism' does not make a reference to the word 'SIMI' but in reply to the Tribunal's question, he stated that it has certain portions, which are fundamentally against the secular features of our Constitution and thus are offending. He also stated that in his affidavit the names of three organizations, namely, Islamic Students Association (ISA), Minority Rights Watch (MRW) and Wahadat-e-Islami (WEI) are given as the front organizations of SIMI on the basis of the intelligence reports. He further stated that the objectives of these three organizations, if seen on the face of it through their Memorandum of Associations etc., seem to be good but the intelligence reports have shown that the former active members of SIMI are trying to propagate and implement the objectives of SIMI through these organizations surreptitiously and in a clandestine manner. He further stated that Mr. A. Shah Nawaz, Advocate, is a signatory and a trustee of Nanma Charitable Trust and is known to be a member of Minorities Rights Watch. He further stated that intelligence reports show that this gentleman was a former member of SIMI and is spreading seditious material through this frontal organization.

#### (II) At Udaipur in Rajasthan :

At Udaipur, the Central Government examined the following witnesses in support of the Notification banning SIMI :—

(i) Mr. Satyendra Singh Ranawat, Addl. Superintendent of Police, Bharatpur Distt. Rajasthan (PW-6);

(ii) Mr. Rajesh Nirwan, Inspector General of Police, C.I.D. (Intelligence), Jaipur, Rajasthan (PW-7)

88(a). PW-6, Mr. Satyendra Singh Ranawat, Addl. Superintendent of Police, Bharatpur Distt., Rajasthan, has proved his affidavit Ex. PW-6/A. Along with his affidavit, he has filed certified copies of FIR Nos. 130/2008, '131/2008, 132/2008, 133/2008 registered at PS Manak Chowk, Jaipur on 13-5-2008 and FIR Nos. 117/2008, 118/2008, 119/2008, 120/2008 & 121/2008 registered at PS Kotwali, Jaipur on 13-5-2008 under Sections 121, 121A, 124A, 153, 153A, 302, 307, 427, 120B IPC, Sections 3, 4, 5, 6 of Explosive Substances Act and Sections 16A, 18 of 'Unlawful Activities' (Prevention) Act, 1967 [Ex. A-1 (colly)]. All these FIRs were registered in respect of serial bomb blasts which took place at 8 different places in Jaipur on 13-5-2008 pursuant to which 70 people died and 186 people were severely injured. He has also filed the certified copy of the e-mail, which was received by various news channels from Indian Mujahideen claiming responsibility for the serial bomb blasts (Ex. A-2). He has also filed the certified/true copies of the (i) seizure memo, (ii) test identification parades of the accused, (iii) charge sheet No. 187/08 along with supplementary charge sheets, (iv) statement of witnesses, (v) interrogation reports, (vi) forensic reports, (vii) various bills, and (viii) sketches of suspects prepared and released

by Rajasthan police etc. and the same are exhibited as Ex. A-3 to Ex. A-12. In his examination-in-chief, he has stated that Shahbaj Hussain, who purportedly sent the mail was identified by the owner of Cyber Cafe, wherefrom the e-mail was sent and various other accused were also identified by various witnesses in the Test Identification Parade and their statements were also recorded under Section 161/164 of Cr. P.C.

(b) In his cross examination by Mr. Mobin Akhtar, Advocate representing H.A. Siddiqui and Misbah-Ul-Islam, PW-6 stated that during the course of interrogation of Shahbaj Hussain, he admitted that after the ban on SIMI, two factions namely, Al-Hindi and Al-Arabi were created in order to run the movement in three different languages, which was earlier being espoused by SIMI. He also stated that he filed the interrogation report of Shahbaj Hussain and other accused persons as also the e-mail in order to establish the link between SIMI and Shahbaj Hussain and between SIMI and Indian Mujahideen. He admitted that he had not arrested Shahbaj Hussain and that he had not recorded his interrogation report, which is annexed with the affidavit. He also admitted that he did not make any effort to get the statements of any witness recorded under Section 164 Cr. P.C. as he did not feel the necessity thereof. He stated that during the course of interrogation of these persons as also the inquiries and interrogation done of other persons at Khandwa, Ahmedabad, Mumbai, Lucknow, Indore and Delhi etc., where involvement of the persons accused in the Jaipur Bomb blasts was confirmed, it transpired that the accused persons, including Shahbaj Hussain, were members of SIMI.

89(a). PW-7, Mr. Rajesh Nirwan, Inspector General of Police, CID(Intelligence), Jaipur, Rajasthan, and the Nodal Officer, proved his affidavit Ex. PW-7/X-1. Along with his affidavit, he has filed certified copies of FIR No. 111/2001 registered at PS Kotwali, Bikaner under Section 10 of Unlawful Activities (Prevention) Act, FIR No. 102/2001 registered at PS Bapawarkalan, Kota Rural under Sections 10 & 13 of Unlawful Activities (Prevention) Act, and FIR No. 341/2001 under Section 13 of Unlawful Activities (Prevention) Act and Section 153A of IPC along with certified copies of charge sheets in respect of aforesaid FIRs and various other documents relating to the said FIRs, which are exhibited as Ex. B (colly), C (colly), & D (colly) respectively. In his affidavit he has stated that SIMI, due to its ideology and preaching, has developed a parochial, rigid, intolerant and communal outlook amongst the minority community, mainly in the youth. SIMI had circulated pamphlets and posters with highly objectionable and provocative language and text which are against the religious feelings of the majority community and their activists are operating under the name of cover organization Wahadat-e-Islami.

(b) In his cross examination by Mr. Mobin Akhtar, Advocate, PW-7 stated that he is not aware of any notification having been issued by the Government of Rajasthan with regard to the literature to which references

have been made in the cases. He admitted that no notification banning Wahadat-e-Islami has been issued. He further stated that according to him no action has been taken against the office bearers and members of Wahadat-e-Islami as their activities are being monitored. He also stated that he is not aware whether any case has been registered against the office bearers of Wahadat-e-Islami.

### (III) At Kolkata in West Bengal:

At Kolkata, the Central Government examined the following witnesses:—

- (i) Ms. Kim, Superintendent of Police (City), Patna, Bihar (PW-8);
- (ii) Mr. Swapan Banerjee Purnapatra, Deputy Inspector General of Police, Intelligence Branch, Kolkata (PW-9).

90(a). PW-8, Ms. Kim, Superintendent of Police (City) Patna, Bihar, and the Nodal Officer for the State of Bihar proved her affidavit Ex. PW-8/A. Along with her affidavit, she has filed true copy of FIR No. 279/2001 (Ex. A-2) registered under Sections 10, 11, 12 & 13 of Unlawful Activities (Prevention) Act read with Section 298 of IPC against 16 members/active supporters of SIMI for conducting secret meetings in and around Amin Manzil, Exhibition Road, Patna and giving provocative speeches with intention to create communal disharmony. She has also filed a certified copy of charge sheet No. 182/2007 (Ex. A-4) in respect of aforesaid FIR, wherein four persons were sent for trial for various offences. Ex. A-6 is the certified copy of the supplementary charge sheet No. 14/2008, against three accused persons, filed in respect of the aforesaid FIR. In her affidavit she has stated that one of the arrested accused Md. Hasib Raza @ Samim Bhai has been found to be involved in serious cases in other parts of the country such as in anti national activities in Jalgaon, Maharashtra and 20 bomb blast cases in Ahmedabad as also in the conspiracy for blowing the Howrah Bridge in February, 2002 and accordingly several cases have been registered against him in different parts of the country.

(b) In her cross examination by Ms. Sridevi Panikkar, Advocate representing H.A. Siddiqui and Misbah-Ul-Islam, PW-8 admitted that after the registration of FIR No. 279/2001, no other FIR has been registered against SIMI or any of its alleged members in the State of Bihar. She also admitted that the involvement of Hasib Raza in other cases, as stated by her, was based on the letter received from the Deputy Commissioner (Intelligence), Gandhi Nagar, Gujarat and that she had not personally seen any of the records pertaining to the case of Howrah Bridge conspiracy, Ahmedabad blast case and the Jalgaon (Maharashtra) case.

91(a). PW-9, Mr. Swapan Banerjee Purnapatra, Deputy Inspector General of Police, Intelligence Branch, West Bengal, and the Nodal Officer for the State of West Bengal has proved his affidavit Ex. PW-9/A. Along with his affidavit, he has filed copies of (i) FIR No. 403/2001 and two charge sheets filed pursuant to the said FIR (Ex. B)

under Sections 153(A)/153(B) and 120B IPC and Sections 10/11/12/13 of Unlawful Activities (Prevention) Act; (ii) FIR No. 335/2001 and the charge sheet filed on the basis of same (Ex. D) under, Sections 153(A)/153(B)/295(A)/298/505/121(A) and 120(B) IPC; (iii) FIR No. 171/2001 and the charge sheet filed on the basis of the same (Ex. F) under Sections 153/153(A)/153(B) and 120(B) IPC and Sections 10/13(a)(b) of Unlawful Activities (Prevention) Act; (iv) FIR No. 110/2001 and the copy of the charge sheet etc. (Ex. G) under Sections 121(A)/124(A)/153(A)/153(B) IPC; (v) FIR No. 327/2001 and the charge sheet etc. (Ex. H) under Sections 153(1)/153(B)/121(A)/124(A) IPC, and (vi) FIR No. 111/2001 and the charge sheet etc. (Ex. I) under Sections 153(A)/153(B)/124(A)/120(B) IPC and Sections 10/13 of Unlawful Activities (Prevention) Act. In his affidavit he has stated that the SIMI activists have floated newly formed organizations under different nomenclature and their activities are confined to holding secret meetings, maintaining alleged contacts with the different organizational intellectuals like Popular Front of India (PFI), Social Democratic Party of India (SDPI), Indian National League (INL), Youth Islamic Association (YIA), Federation of Muslim Association (FOMA) etc. to get the ban on the organization (SIMI) withdrawn. The witness also handed over a sealed cover containing confidential intelligence reports about the activities of SIMI.

(b) In his cross examination by Ms. Sridevi Panikkar, Advocate, PW-9 stated that the aforesaid organizations are not banned by the Government of India and he is not aware if any case has been registered against them. However, he has stated that after 2001, no case has been registered against SIMI in the State of West Bengal. He also stated that he is not aware as to whether Jamaat-e-Islami Hind is a banned organization in India.

#### (IV) At Bangalore in Karnataka :

At Bangalore, the Central Government examined the following witnesses:—

- (i) Mr. Jagadish Basalingappa Khot, Deputy Superintendent of Police, DCRB, District Chitradurga, Karnataka (PW-10);
- (ii) Mr. Paul S. Varma, Deputy Superintendent of Police, Somawarpet Sub-division, Kodagu District, Karnataka (PW-11);
- (iii) Mr. Jayanth Vasudev Shetty, Superintendent of Police, Karkala Sub-Division, Udupi District, Karnataka (PW-12)

92(a). PW-10, Mr. Jagadish Basalingappa Khot, Deputy Superintendent of Police, DCRB, District Chitradurga, Karnataka, has proved his affidavit Ex. PW-10/A. Along with his affidavit, he has annexed a copy of the FIR No. 260/2008, the seizure memo and the English translation (exhibit PW- 10/A1). The said FIR was registered in Golagumbaz Police-Station under Sections 153(A), 153(B), 120(B), 149 IPC and Sections 11, 13, 15, 18 of Unlawful Activities (Prevention) Act, 1967 against some unknown

persons suo-moto on the complaint filed by Mr. M.K. Dhamannavar, sub-inspector, who on receiving an information, found that some of the miscreants had pasted provocative pamphlets containing slogans and statements, viz. "Our Struggle For Final & Complete Supremacy of Allah" "Involves Babri Masjid Too" so as to create clashes between Hindus & Muslim. The witness has also filed voluntary statements of various accused persons marked as 'B', 'C', 'D', 'E', 'F', 'G', 'H', 'I', 'J', 'K' & 'L' out of which only mark 'L' is the statement which has been written by the witness. The said statement is Ex.PW-10/L. The witness has also stated that Shaan-e-Karim, one of the accused facing trial in FIR No. 260/2008, had distributed pamphlets in Bijapur, which were divisive, and the same is exhibited as Ex. PW-10/G. He further stated that CDs containing provocative slogans intending to bring disharmony between Hindus and Muslims were also seized from the accused, Shaan-e-Karim. The copy of the charge sheet filed in the aforesaid FIR was exhibited as Ex. PW-10/N.

(b) In his cross examination by Sridevi Panikkar, Advocate representing H.A. Siddiqui and Misbah-Ul-Islam, PW-10 stated that the pamphlet Ex. PW-10/G does not bear the word 'SIMI', however, it bears the word 'IBT' on the left hand side, which has a reference to Islamic Book Treasure. In answer to the question as to how does he says in his affidavit that the pamphlet is attributed to SIMI, he stated that Shaan-e-Karim was collecting money from the students of Dental College where he was studying and issuing receipts for the money received by him which had the word 'SIM' and these pamphlets were published by him only. The witness has admitted that no statement under Section 164 Cr.P.C. has been recorded in respect of any of the accused persons whose statements have been attached along with his affidavit. He also admitted that along with his affidavit, he has not filed CFSL report of the examination of CPUs but volunteered that the same has to come from Hyderabad.

93(a). PW-11, Mr. Paul S. Varma, Deputy Superintendent of Police, Somawarpet Sub-division, Kodagu District, Karnataka, has proved his affidavit Ex. PW-11/A. Along with his affidavit, he has filed the certified copy of Crime No. 37/2012 and the English translation. The said FIR was registered by PS Shuntikoppa under Sections 153(A), 143, 147, 120(B), 121, 121(A), 201, 149 IPC and Sections 3 & 5 of Explosive Substances Act against 13 accused persons suo-moto on the complaint filed by sub-inspector, who received an information that the accused persons have had several meetings conspiring to create hatred amongst the public, causing bomb blasts in various places in the State of Karnataka and other neighbouring States. The witness has also annexed statements of various witnesses along with his affidavit. The copy of the charge sheet in respect of aforesaid FIR was annexed as Ex. R along with the affidavit.

(b) In his cross examination by Sridevi Panikkar, Advocate, PW-11 stated that Ex. 'R' is the draft charge sheet which has been submitted to the Govt. of Karnataka

for the purpose of obtaining its approval before the same is filed in the court. He admitted that all the statements of the witnesses, which have been annexed along with the affidavit, are recorded under Section 161 Cr.P.C. He also stated that Rafeeq and Shihab, who are the witnesses in the draft charge sheet, are made witnesses on the basis of their statements recorded in the Madivala Crime No. 483/2008 and that he had not recorded the statements of these two witnesses in the Madivala case. The witness has admitted that none of the documents annexed with his affidavit are filed in Court.

94(a). PW-12, Mr. Jayanth Vasudev Shetty, Deputy Superintendent of Police, Karkala sub-division, Udupi District, Karnataka, has filed his affidavit exhibited as Ex. PW-12/1. Along with his affidavit, he has filed a copy of the FIR No. 242/2008 and the English translation (Exhibit A). The said FIR was registered by PS Ullal in under Sections 121(A), 122, 153(A), 120(B), IPC, Sections 5 & 6 of Explosive Substances Act, 1908 and Sections 11, 13, 18 of Unlawful Activities (Prevention) Act, 1967 against the accused persons on the complaint filed by Mr. Venkatesh Prasanna, police inspector. The witness has also annexed certified copies of various seizure memos along with his affidavit. The certified copy of the charge sheet in respect of aforesaid FIR along with English translation is also annexed as Exh. R. The examination of this witness was deferred at the instance of the learned standing counsel Mr. Datta. However, after deferring the same, his testimony has not been completed, therefore, it cannot be read in evidence.

#### (V) At Aurangabad in Maharashtra :

At Aurangabad, the Central Government examined the following witnesses :—

- (i) Mr. Rajendra Balajirao Dahale, D.C., SID, State Police Headquarters, Mumbai, Maharashtra, (PW-13);
- (ii) Mr. Pradeep Bhargav Jadhav, Police Inspector (Crime), Vijapur Naka Police Station, Solapur, Maharashtra (PW-14);
- (iii) Mr. Sanjay Mohan Kamble, Police Inspector (Crime Branch), Navi Mumbai, Maharashtra (PW-15)

95(a). PW-13, Mr. Rajendra Balajirao Dahale, Deputy Commissioner, SID, State Police Headquarters, Mumbai, and the Nodal Officer has proved his affidavit Ex. PW-13/1. Along with his affidavit, he has annexed 12 certified copies of the charge sheets pertaining to SIMI in respect of different FIRs registered from the year 2001 to 2002. In his affidavit, the witness has stated that during the course of investigation it has been revealed that the members of SIMI continued their illegal and anti-national activities even after the ban. He further stated that though the ban has served as a great deterrent, the clandestine activities of the organization have not stopped.

(b) In his cross-examination by Mr. Ashok Aggarwal, Advocate representing H.A. Siddiqui and Misbah-Ul-Islam, PW-13 stated that he had not investigated any of these cases personally but he denied the suggestion that these

cases have been kept pending deliberately by him or by the prosecution.

96(a). PW-14, Mr. Pradeep Bhargav Jadhav, Police Inspector (Crime), Vijapur Naka Police Station, Solapur, Maharashtra, has proved his affidavit Ex. PW-14/1. Along with his affidavit, he has filed the certified copy of FIR No. 3036/2008, and its English translation. The said FIR was registered by Vijapur Naka Police Station, Solapur under Sections 2(a), 10, 13 of Unlawful Activities (Prevention) Act, 1967 against Khalid Ahmed Muchhale on the complaint filed by Mr. S.P. Bondar, police sub-inspector. The witness in his affidavit has stated that the accused, Khalid Muchhale, in his statement has admitted that he was a member of SIMI and that on 26-3-2008 he met a senior office bearer of SIMI namely, Safdar Nagori at Indore. A copy of the said statement is annexed with the affidavit and Marked 'X'. The witness has also annexed certified copy of the charge sheet being RCC No. 1285/2011 filed in respect of the aforesaid FIR. The witness has also annexed certified copies of House search panchnama dated 29-3-2008 and the incriminating material seized therein along with the English translation.

(b) In his cross examination by Mr. Ashok Aggarwal, Advocate, PW-14 stated that he was made the investigating officer of this case on 15-7-2011 i.e. three months prior to the date of filing of the charge sheet. He admitted that the FIR in respect of which the charge sheet has been filed was on the basis of the search conducted on 29-3-2008. However, he denied that no incriminating material was seized in the said search. The witness also denied that the accused Khalid Muchhale has not been doing any work for SIMI after 27-9-2001 and volunteered that Khalid Muchhale had gone to Balgaum along with Dr. Munson and he was arrested with the said doctor at Indore.

(c) The testimony of the witness clearly establishes that despite the ban on SIMI, clandestine activities of the banned organization SIMI are still continuing. This has been corroborated by the fact that one of the person by the name of Khalid Muchhale has admitted that he has been doing work on behalf of SIMI. This person has also named Safdar Nagori as one of the senior members of SIMI, who is active in carrying on its activities. It may be pertinent here to mention that the learned ASG has submitted that presently Safdar Nagori is incarcerated in connection with the illegal activities having been done by him for which various offences have been registered against him.

97(a). PW-15, Mr. Sanjay Mohan Kamble, Police Inspector (Crime), Navi Mumbai, Maharashtra, has proved his affidavit Ex. PW-15/1. Along with his affidavit, he has filed the certified copy of FIR in LAC No. 1106/2006, and the English translation. The said FIR was initially registered by Ghatkopar Police Station under Sections 10 & 13 of the Unlawful Activities (Prevention) Act, 1967 but subsequently the investigation of the same was transferred to DCB, CID Unit No. VII wherein LAC No. 34/2006 was registered and after completion of the investigation, charge sheet was filed by them. In his examination-in-chief, the witness has

stated that he was a member of the investigation team which had arrested Nafis Ahmed Jamil Ahmed Ansari on 11-8-2006. He further stated that in the said FIR, there were five accused persons, out of which initially two were arrested and against them the charge sheet has already been filed and the remaining three accused persons are absconding. He also stated that he learnt that the third accused namely Md. Ali Alam Shaikh @ Aziz was arrested on 10-11-2011 by P.I. Survey and a supplementary charge sheet in this regard was filed by P.I. Survey subsequently. In his affidavit the witness has stated that during the course of investigation of accused No.1, Shabbir Ahmed Mashuullah and accused No.2, Nafis Ahmed Jamil Ahmed, it was revealed that they are members of banned organization SIMI and that they participated in the meetings of SIMI held for the purpose of committing unlawful activities. He further stated that through banned organization SIMI, with the intention of causing damage to public property and loss of human life, these two accused persons had gone to Pakistan via Dubai in May/June, 2003 and got training for handling arms and ammunitions and for preparation of bombs.

(b) In his cross-examination by Mr. Ashok Aggarwal, Advocate, PW-15 stated that he was a member of the team which had arrested Nafis Ahmed Jamil Ahmed Ansari while, simultaneously another team had arrested the other accused Shabbir Ahmed. He further stated that he was not aware whether the proceedings under Sections 82 and 83 of Cr.P.C. were initiated against Md. Ali Alam Shaikh @ Aziz or that Md. Ali Alam Shaikh was arrested in another case by ATS Mumbai, whereupon his arrest was shown in the present case.

#### (VI) At Mumbai in Maharashtra :

At Mumbai, the Central Government examined the following witnesses:—

- (i) Mr. Suresh Digambarrao Deshpande, Asstt. Commissioner of Police, ATS, Mumbai, Maharashtra, (PW-16);
- (ii) Mr. Navinchandra Datta Reddy, Superintendent of Police, ATS, Aurangabad, Maharashtra (PW-17);
- (iii) Mr. Atul Sabnis, Police Inspector, ATS, Maharashtra (PW-18).

98(a). PW-16, Mr. Suresh Digambarrao Deshpande, Asstt. Commissioner of Police, ATS Mumbai, Maharashtra, has proved his affidavit Ex. PW-16/1. Along with his affidavit, he has filed the certified copy of CR No. 31/2011 along with the English translation (Ex. A-2). The said CR was registered with ATS Police Station, Kalachowki, Mumbai City under Sections 120(B), 489(B), 489(E), 34 of IPC read with Sections 10, 13, 17, 18(B) of Unlawful Activities (Prevention) Act, 1967 against Haroon Rashid Abdul Hamid Naik. The said accused was found in possession of fake Indian currency notes collectively valued at Rs.97,500 knowing the same to be fake, in order to circulate the same as genuine. PW-16 in his affidavit has further stated that during investigation,

it was revealed that the accused was an active member of SIMI. Further, the accused disclosed that he went to Pakistan and Afghanistan to have terrorist training and also disclosed the various unlawful activities he had indulged in and further disclosed the names of two other persons namely Asrar Ahmed Abdul Hamid Tailor @ Sagari and Azhar Ul Islam Mohd. Ibrahim Siddiqui @ Munna, who were arrested on 12-9-2011 and 26-9-2011 respectively. PW-16, along with his affidavit, has also annexed the certified copies of the statements of the aforesaid three accused persons in vernacular as well as their English translations [Ex. A-3 and A-4 (colly)]. The Panchnama dated 18-9-2011 along with English translation in respect of CR No. 31/2011; the certified copies of the statements of the witnesses along with their English Translation; and the certified copy of the charge sheet in respect of the aforesaid CR are annexed with the affidavit as Ex. A-5, Ex. A-6 (colly) and Ex. A-8 respectively.

(b) In his cross-examination by Mr. Ashok Aggarwal, Advocate representing H.A. Siddiqui and Misbah-Ul-Islam, PW-16 stated that the case bearing CR No. 31/2011 is pending trial and the charges have not yet been framed against the accused persons. He admitted that none of the literature seized in the instant case has been published by the organization SIMI. He further admitted that the statements of the accused persons were recorded when they were in police custody.

99(a). PW-17, Mr. Navinchandra Datta Reddy, Superintendent of Police, ATS Aurangabad, Maharashtra, has proved his affidavit Ex. PW-17/1. Along with his affidavit, he has filed copy of CR No. 2/2012, and its English translation. The said CR (FIR) was registered with ATS Kalachowki Police Station, Mumbai City under Sections 10, 13, 15 & 16 of Unlawful Activities (Prevention) Act, 1967 against Akhil Yusuf Khilji and Jafar Hussain. In his examination-in-chief, the witness has stated that during the course of investigation of the aforesaid CR (FIR), the names of other accused persons namely Mohd. Abrar @ Munna @ Ismail @ Abdul Rehman and Anwar Hussain were disclosed and various incriminating materials have been found against them showing their involvement in unlawful activities. The said material has been handed over in a sealed envelope to this Tribunal, with a view to ensure that the investigations of the case are not prejudiced, which is taken on record.

(b) In his affidavit, the witness has stated that on the basis of secret information, Mohd. Abrar @ Munna @ Ismail, was arrested. He was absconding in the 2008 Ahmedabad Bomb Blast case and was an active member of SIMI. He was coming to meet his accomplices on 26-3-2012 when the ATS Aurangabad laid a trap and tried to arrest three persons but they fired on the ATS police persons. During retaliation, one person namely Khalil @ Azhar Qureshi died while the other two were arrested.

(c) In his cross-examination by Mr. Ashok Aggarwal, Advocate, PW-17 stated that he was a part of the team involved in the encounter at Aurangabad on 26-3-2012 and

that he had not filed any FIR with regard to the said encounter. He admitted that he had mentioned the name of the deceased in the encounter as Khalil @ Azhar Qureshi. He stated that he cannot admit or deny as to whether in the said FIR, the name of the deceased is mentioned as Khalil Khilji as he will have to see the said FIR. The witness has stated that subsequent to the registration of the FIR, the complete name of the deceased as Khalil @ Azhar Qureshi was learnt. He admitted that the investigations till date have revealed that the two persons namely Mohd. Abrar and Khalil Khilji, as well as the deceased, are the members of the banned organization SIMI. The witness has further stated that he cannot admit or deny the suggestion that the literature which has been seized in the aforesaid FIR is not published by SIMI as the matter is under investigation.

(d) It may be pertinent to mention here that there is no cross-examination of the witness with regard to the arrest of Mohd. Abrar @ Munna @ Ismail, who was a member of SIMI and was arrested around 26.3.2012 which means much after the notification was issued for banning the organization on 3.2.2012.

100(a). PW-18, Mr. Atul Sabnis, Police Inspector, ATS, Maharashtra, was examined orally as the affidavit filed by him has been withdrawn by learned counsel for Union of India. In his examination-in-chief the witness has stated that he is the investigating officer in respect of FIR bearing CR No. 17/2008 dated 21.8.2008 registered with ATS Police Station, Kalachowki, Mumbai City under Sections 10 & 13 of the Unlawful Activities (Prevention) Act, 1967. He further stated that originally the FIR was registered against Firoz Mehboob Pathan but during the interrogation, another accused person, namely, Imtiyaz Babumiya Sheikh was also arrested as his involvement was found in the case and incriminating material in the form of book titled 'Jihad-e-Kashmir Farzijat Fajilat Aur Tarik' was recovered from him. In addition to this, various other incriminating articles in the shape of CDs etc. were also recovered from him. He further stated that the charge sheet in respect of the said FIR was filed by him on 24.6.2011 against five accused persons and after filing of the charge sheet he had arrested two more accused persons by the name of Shabbir Mohiddin Gangawali and Himayat Mirza Baig. He also stated that he has yet to file the supplementary charge sheet against the two persons arrested later.

(b) In his cross examination by Mr. Ashok Aggarwal, Advocate, PW-18 admitted that no recovery of material connected with the banned organization SIMI or otherwise has been effected from the two accused persons, who have been arrested subsequently. But a book pertaining to Kashmir was recovered from them which shows that the accused persons are members of the banned organization and are supporting the so called liberation movement of Kashmiris.

#### (VII) At Jabalpur in Madhya Pradesh :

At Jabalpur, the Central Government examined the following witnesses:—

- (i) Mr. Mukesh Kumar Vaishya, City Superintendent of Police, Khandwa, Distt. Khandwa, Madhya Pradesh (PW-19);
- (ii) Mr. Mahendra Tarnekar, City Superintendent of Police, Dewas, Madhya Pradesh (PW-20);
- (iii) Mr. Dinesh Kaushal, City Superintendent of Police, Rewa, Madhya Pradesh (PW-21);
- (iv) Mr. Arun Kumar Mishra, Sub Divisional Officer Police, Itarsi, Distt. Hoshangabad, Madhya Pradesh (PW-22);
- (v) Mr. J. K. Dixit, Deputy Superintendent of Police, ATS Gwalior, Madhya Pradesh (PW-23);
- (vi) Mr. Sohanpal Singh Chaudhary, Sub-Divisional Officer (Police), Khacrod, Distt. Ujjain; Madhya Pradesh (PW-24);
- (vii) Mr. T. S. Baghel, City Superintendent of Police, Mandsaur, Madhya Pradesh (PW-25);
- (viii) Mr. Kiran Lashkarkar, Sub-Divisional Officer (Police), Mundi, Distt. Khandwa, Madhya Pradesh (PW-26)

101(a). PW-19, Mr. Mukesh Kumar Vaishya, City Superintendent of Police, Khandwa, Madhya Pradesh, has proved his affidavit Ex. PW-19/1. Along with his affidavit, he has annexed true copies of FIR Nos. 728/2009, 729/2009 & 703/2009 along with their English translation (Ex. 'A', 'C' and 'E' respectively). The aforesaid FIRs were registered under Sections 302 of IPC and Sections 15/16 of Unlawful Activities (Prevention) Act on account of the killings of three different persons, including one constable of ATS, Khandwa namely, Mr. Sita Ram; one advocate namely Mr. Sanjay Paul and an officer of the bank namely, Mr. Ravi Shankar. The witness has also annexed the true copies of the charge sheets filed in respect of the aforesaid three FIRs along with their English translation [Ex. 'B', 'D' & 'F' (colly) respectively]. The witness has stated that all the three charge sheets were filed on the same date i.e. 21-12-2011.

(b) In his cross examination by Mr. Ashok Aggarwal, Advocate, PW-19 denied the suggestion that all the three FIRs were registered in pursuance to a single incident and volunteered that these were three separate incidents of crime. The witness has stated that there were seven accused persons in FIR No. 728/2009. He also stated that efforts were made, including conducting of raids at various places of hiding, to arrest the three accused persons namely Sheikh Mehboob, Zakir Hussain and Mohd. Aslam, who were found to be suspects in FIR Nos. 728/2009 & 703/2009. He further stated that there is only one accused namely Ejajuddin@Riyaz@John@Raja@Rahul involved in FIR No. 729/2009, who is also involved in FIR No. 703/2009. He admitted that four accused persons were discharged in FIR No. 728/2009 & 703/2009. He also admitted that the confessional statements of the accused persons were recorded while they were in police custody and volunteered that on the basis of these confessional statements, various other evidences were collected which fortified their confessional statements.

102(a). PW-20, Mr. Mahendra Tarnekar, City Superintendent of Police, Dewas, Madhya Pradesh, has proved his affidavit Ex. PW-20/1. Along with his affidavit, he has annexed true copy of FIR No. 456/2009 along with its English translation (Ex. A). The aforesaid FIR was registered under Section 392 of IPC for the offence of robbery of Bank of India, Branch Vijayganj Mandi, by 5 persons armed with pistols and other weapons.

(b) During the course of investigation, the complicity of accused Abu Faizal, Shaikh Mehboob, Mohd. Ikrar Shaikh, Amzad Shaikh and Zakir became clear. The Memorandum of accused persons revealed their design to assassinate three Judges of Lucknow Bench of the Allahabad High Court, who had delivered the verdict in the Babri Masjid-Ram Janam Bhoomi case. Further, the complicity of SIMI activists in murder of ATS constable Sitaram Yadav and dacoity of Mannapuram Gold Finance Company was also revealed. The investigation also revealed that a significant part of the amount looted from the Bank was used for pursuing court proceedings for obtaining bail of Safdar Nagori and other SIMI workers. The concerned advocate, Shahid Azmi, to whom significant payment had been made, was subsequently murdered. Amounts were also spent on recruitment of new members, purchasing of laptop, computer and publication of literature/books pertaining to SIMI organization. The witness has also annexed true copy of the charge sheet dated 24.11.2011 and the relevant annexures along with its translation [Ex. B (colly)] and the true copy of the statements of the accused persons [Ex. C (colly)].

(c) In his confessional statement the accused, Abu Faizal, stated that he had prepared a plan to do the bank dacoity/bank robbery because the SIMI organization had become financially very weak. For the sake of strengthening the organization, he called Amjad, Zakir, Mehboob and Ikrar to Dewas and there all the five persons planned for the bank robbery. He also narrated the whole incident how they looted the aforesaid bank. In their confessional statements, the other accused have also admitted to have committed the bank robbery and other illegal activities.

(d) In his cross examination by Mr. Ashok Aggarwal, Advocate, PW-20 stated that he cannot specifically state as to what investigations were carried out during the period from 24.8.2009 to 16.6.2011 without seeing his case diary. He admitted that all the five accused persons allegedly involved in FIR No. 456/2009 became suspects after the letter from ATS Bhopal was received. He also admitted that the alleged involvement of the accused persons in the aforesaid FIR is based only on the confessional statements purported to have been made in CR No.4 & 5/2011, PS ATS Bhopal but volunteered that after receipt of information from the ATS Bhopal to the effect that Abu Faizal is purported to have confessed his involvement in FIR No. 456/2009, the formal arrest of the said accused in the aforesaid FIR was shown and the matter was investigated including the interrogation of the accused person, which confirmed the findings intimated to them by ATS Bhopal.

The witness also admitted that no document from the accused persons, which could show their connection with the organization SIMI, was recovered in this case but volunteered that from the possession of Amjad, some documents relating to unlawful activities being carried out by the banned organization SIMI were recovered by ATS Khandwa and similar documents were also seized from other three accused persons by ATS Bhopal. The witness denied the suggestion that FIR No. 456/2009 is false and fabricated and that these accused persons have no connection with the banned organization SIMI.

103(a). PW-21, Mr. Dinesh Kumar Kaushal, City Superintendent of Police, Rewa, Madhya Pradesh, has proved his affidavit Ex. PW-21/1. Along with his affidavit, he has filed a true copy of charge sheet in Crime No. 4/2011 under Sections 120(B), 124(A), 153(A), 153(B), 353, 420, 467, 468, 471 of IPC, Sections 25 & 27 of Arms Act and Sections 3; 10, 13, 16, 17, 18, 19, 20, 21, 38, 39 & 40 of Unlawful Activities (Prevention) Act along with various other documents forming part of the charge sheet [Ex. A (colly)]. The witness in his examination-in-chief has stated that during the course of investigation it has been revealed that members of Muslim community belonging to organization SIMI were targeting the members of RSS. Further, it was revealed from the seized electronic data from the personal computer of Abu Faizal, an accused, that the messages were sent to various members of the community by the members of the banned organization SIMI, spreading hatred amongst various communities and had the potential of disturbing the integrity and sovereignty of India. He further stated that the three accused persons namely, Dr. Abu Faizal, Mohd. Ikrar and Sheikh Mehboob were absconding and there was evidence to the effect that they were earlier also involved in unlawful activities of the banned organization SIMI and that Dr. Abu Faizal and Mohd. Ikrar had conducted a training camp at Raipur on 21st and 22nd May, 2011 for the purpose of galvanizing the activities of the banned organization SIMI and recruiting more members. Similar camp was also conducted at Bhopal.

(b) The witness has also stated that decision was taken by these persons that they would loot the money from the persons/institutions which lend money on interest as that was un-Islamic and the looted money could be utilized for furthering the objectives of the banned organization SIMI and for this purpose the members of the organization had conducted various bank dacoities. Further, the accused persons had resorted to communication through the medium of internet with the help of internet cafe since the mobile phones had the potential of their getting detected and arrested. The modus operandi which was followed by the members was that they will not go online with the other members; they would draft a message and give the passwords to the members on the other side, who will open the file, read the message and thereafter delete the same. With this modus operandi, the activities of the banned organization SIMI were continued and they widened the membership net of the organization SIMI. The witness

further stated that the members of the banned organization SIMI also adopted the modus operandi of changing their names to Hindu names and then targeting the selected persons who were acting as hurdles in the way of propagating the objectives of SIMI. The witness also stated that the accused persons also got published books on Jihad which gave 44 methods of waging Jihad and apart from this, various other books and visual materials like DVDs, VCDs were seized which were used for propagation of the objectives of the banned organization SIMI and also for the purpose of achieving Muslim rule in the country.

(c) In his cross examination by Mr. Ashok Aggarwal, Advocate, PW-21 admitted that the statements of the accused persons were recorded while they were in police custody and that he had not recorded the statements of the accused persons under Section 164 Cr.P.C. The witness denied the suggestion that the connection of accused with the activities of SIMI regarding which he had testified in court is solely on the basis of the confessional statements attributed to the accused persons. The witness also denied the suggestion that the seized articles like DVDs, VCDs, pen drives or the laptop/hard disk have no material which is relatable to the banned organization SIMI and further denied the suggestion that the e-mails which have been intercepted and seized do not have any reference to the activities of the organization SIMI.

(d) The testimony of the witness is very important because he has not only talked about recovery of books but also visual material like DVD, VCD, which were containing seditious material, from the accused persons and has also proved the fact that although the word 'SIMI' may not have been used in any article seized but it certainly shows that the activities of the SIMI are continuing even as on date.

104(a). PW-22, Mr. B.P. Mishra, Sub-Divisional Officer (Police), Itarsi, Distt. Hoshangabad, Madhya Pradesh, has proved his affidavit Ex. PW-22/1. Along with his affidavit, he has filed true copies of FIR Nos. 168/2010 and 72/2010 (Ex. 'A' & 'G' respectively). FIR No. 168/2010 was registered under Sections 395 & 397 of IPC by Police Station Itarsi, Distt. Hoshangabad pertaining to a dacoity which had taken place in Canara Bank, Branch Itarsi. The witness in his examination-in-chief has stated that the aforesaid case was originally registered as a case of robbery, however, subsequent thereto, it was solved and some persons who were sympathizers of SIMI were suspected to be involved. Charge sheet (Ex. 'F') in respect of the aforesaid FIR was filed by the witness and six accused persons namely Mohd. Ikrar, Mohd. Aslam, Abu Faizal, Mohd. Ejajuddin Ahmed, Zakir Hussain and Sheikh Mujib have been sent for facing the trial. FIR 72/2010 was registered under Sections 379, 467 & 411 of IPC on account of theft of a motorcycle which was allegedly used by the accused persons for the purpose of committing the bank robbery. The charge sheet in respect of FIR No. 72/2010 was annexed as Ex. 'H' along with the said affidavit.

(b) In his cross examination by Mr. Ashok Aggarwal, Advocate, PW-22 stated that there are six accused persons

in FIR No. 168/2010, who were arrested by Mr. B.S. Basunia, sub-inspector. He admitted that the aforesaid six accused persons were already under arrest in different FIRs and their formal arrest was shown in the FIR Nos. 168/2010 and 72/2010 only in order to complete the formalities. He further admitted that no material pertaining to SIMI has been recovered in the aforesaid two FIRs but volunteered that when Safdar Nagori, leader of SIMI and other office bearers were arrested, they made Dr. Abu Faizal as the leader of the banned organization SIMI and conferred on him the title 'Amir'. Similarly, Mohd. Ikrar was conferred on the title 'Ansar'. All these accused persons used to collect money by legal and illegal means and were using the said money for the purposes of furthering the objectives of the banned organization SIMI. The witness also admitted that no attempt was made to get the confessional statements of the accused persons recorded under Section 164 of Cr.P.C.

(c) The testimony of this witness is important on account of the fact that the witness has stated that the accused, who were basically anti-social elements, were making the plans to loot banks etc. This witness has fortified the fact that these fringe elements were given incentives by conferring titles on them. He has also admitted that the money so looted was used to procure the new ammunition.

105(a). PW-23, Mr. J. K. Dixit, Deputy Superintendent of Police, ATS Gwalior, Madhya Pradesh, has proved his affidavit Ex. PW-23/1. Along with his affidavit, he has filed a true copy of charge sheet in Crime No. 5/2011 along with various other documents forming part of the charge sheet [Ex. A(colly)]. The said Crime No. 5/2011 was registered under Sections 25 & 27 of Arms Act and Sections 3, 10, 13(1) & 13(2) of Unlawful Activities (Prevention) Act against four accused persons namely Sheikh Mujeeb, Mohd. Aslam, Mohd. Habib and Mohd. Sazid and various incriminating material including the pistol, knife, membership forms of SIMI, pamphlets regarding Babri Masjid, books related to Indian Mujahiddin etc. and pen drive, one CD etc. were seized and the said accused were arrested.

(b) In his cross examination by Mr. Ashok Aggarwal, Advocate, PW-23 admitted that he was not a member of the team which arrested Sheikh Mujeeb, Mohd. Aslam, Mohd. Habib and Mohd. Sazid on 4-6-2011. He also admitted that the statements of the aforesaid four accused have not been recorded by him and that their statements were recorded while they were in police custody. He further admitted that in various articles like CDs, pen drives and DVDs, except in one DVD, there is no mention about organization SIMI because of it being the banned organization. However, in one of the DVD's, there is a reference to the activities of the banned organization SIMI. He also admitted that the e-mails which have been relied upon in the affidavit do not have a reference to the organization SIMI as it is banned but essentially the e-mails have been exchanged for the purpose of spreading the activities of the banned organization SIMI. The witness denied the suggestion that the membership forms of SIMI, which have been recovered, are forged and fabricated by the police.

(c) The witness has withstood the test of cross-examination conducted by the learned counsel for the applicants. Nothing has been brought on record which could persuade this Tribunal to discard his testimony. He has testified regarding the DVD, CD, pen-drives etc. Only one of the DVD was having the reference to the banned organization SIMI. Similarly, the witness has also testified regarding recovery of membership forms of SIMI. He has also denied the suggestion that these forms are forged and fabricated. There is hardly any personal interest of the witness to forge or fabricate the documents. Same logic would equally apply to the State apparatus. So far as the recovery of CD and the VCD are concerned, the absence of the name of the SIMI is immaterial because when the organization is banned and its activities are being carried on clandestinely, it is but natural that precautions would be taken to see that the name SIMI does not get reflected in any manner.

106(a). PW-24, Mr. Sohanpal Singh Chaudhary, Sub-Divisional Officer (Police), Khacroad, Distt. Ujjain, Madhya Pradesh, has proved his affidavit Ex. PW-24/1. Along with his affidavit, he has filed the true copy of FIR No. 112/2010 along with its English translation (Ex. A). The said FIR was registered at PS Birlagram, Distt. Ujjain under Sections 307, 294 & 34 of IPC, Sections 25, 27 of Arms Act and various provisions of the Unlawful Activities (Prevention) Act, 1967 against seven accused persons namely Abu Faizal, Zakir, Mohd. Farhat, Sharafat Ali, Zubair Shah, Imran Shah and Shahzad Shah at the instance of Bheru Lal Tank, the complainant, who was shot at on the date of the incident at about 7.45 a.m. in Birlagram, Distt. Ujjain by three unknown persons. The witness has stated that the three accused persons were arrested on 2-6-2011, who admitted their involvement in the incident. He further stated that on the basis of their interrogation, recovery of various articles used in the commission of the offence was effected. The charge sheet filed in respect of the aforesaid FIR was annexed with the affidavit as Ex. B. True copies of the statements of the accused persons were also annexed with the affidavit as Ex. C.

(b) In his cross examination by Mr. Ashok Aggarwal, Advocate, PW-24 has admitted that apart from one poster, no other article has been seized during the course of investigation in the instant case, which bears the name or reference to the organization SIMI. He stated that three of the accused persons namely Zakir, Abu Faizal and Farhat, were shown to have been formally arrested on production warrants as they were in judicial custody. The witness denied the suggestion that the information regarding the involvement of aforesaid three accused persons was received from ATS Bhopal and volunteered that these three accused persons were named by the other three accused persons namely Imran Shah, Zubair Shah and Shahzad Shah, during their interrogation. The witness admitted that he did not make any effort to get the statement of any of the accused persons recorded under Section 164 Cr.P.C. but he denied the suggestion that the connection between the

organization SIMI and the accused persons is purely on the basis of the statements attributed to them and volunteered that there are other evidences also which connect the organization SIMI with the accused persons.

107(a). PW-25, Mr. T.S. Baghel, City Superintendent of Police, Mandsaur, Madhya Pradesh, has proved his affidavit Ex. PW-25/1. Along with his affidavit, he has filed the true copy of FIR No. 149/2010 along with its English translation (Ex. A). The said FIR was registered at PS Mandi, Distt. Mandsaur under Section 394 of IPC and Sections 25 & 27 of Arms Act on account of a bank robbery which took place on 1-6-2010 at State Bank of Indore, Branch Pipliyamandi. In his affidavit, the witness has stated that the accused persons were acting in furtherance of the concerted design to indulge in bank robbery in several districts of Madhya Pradesh with a view to fund the SIMI organization and its activities. The true copy of charge sheet and supplementary charge sheet in respect of aforesaid FIR along with relevant annexures is annexed with the affidavit as Ex. B (colly).

(b) In his cross-examination by Mr. Ashok Aggarwal, Advocate, PW-25 has stated that two cassettes were seized from Mohd. Sadiq, which had the literature pertaining to SIMI organization. He admitted that apart from these two cassettes, no other literature has been seized in this case naming the organization SIMI and that the CDs which were recovered were actually the video CDs. The witness has clarified that by referring to the word 'cassette' what he meant was VCDs and further clarified that as a matter of practice when he used the word 'cassette', he meant CDs, be it VCDs or DVDs. He stated that he was not aware as to how many documents are contained in the CDs as he has not seen the CDs.

(c) The witness has stated that in the police record there was no mention about the serial number of the currency notes which were looted. However, the description of the currency notes was available to the police. He admitted that the bank notes were identified by the officials of the bank in the presence of the Executive Magistrate, Malhar Grah and volunteered that each bank puts its own slip and a distinct mark on the notes and it was on account of this description that the currency notes were identified. He further admitted that the serial numbers of the currency notes looted from the bank were not received from the bank, however, the currency notes were identified on the basis of the paper slip which was put on the bundles by the branch which was looted. In reply to a question 'was there any identification mark of the currency notes given in the complaint on the basis of which the FIR was registered', the witness has stated that the FIR talks about the fact that the total currency notes were Rs. 1,00,339/-, out of which Rs. 84,000/- was in torn/mutilated/bad condition which were kept in different bundles to be sent to Reserve Bank of India and a sum of Rs. 16,339 were the good currency notes.

(d) The testimony of this witness is very important to establish that the banned organization SIMI is still carrying

on its unlawful activities. This is revealed from the admission of the arrested persons who had looted the bank money, a part of which was subsequently recovered and duly identified by the officials of the bank with the help of paper slips which are put on the bundles of notes. Absence of identification through numbers is not possible unless and until it is brought on record that currency notes were fresh. It has also been testified by the witness that the money so looted was in fact used for furthering the illegal activities of the banned organization SIMI.

108(a). PW-26, Mr. Kiran Lashkarkar, Sub-Divisional Officer (Police), Mundi, Distt. Khandwa, Madhya Pradesh, has proved his affidavit as well as supplementary affidavit Ex. PW-26/1 & PW-26/2. Along with his affidavit (Ex. PW-26/1), he has annexed the true copy of FIR No. 319/2011 along with its English translation (Ex. A). The said FIR was registered on 14-6-2011 under Section 153(A) of IPC, Sections 25, 27 of Arms Act and Sections 3, 10, 13 of the Unlawful Activities (prevention) Act on account of gathering of 10-15 members/activists of the banned organization SIMI in the house of Akhil Khilzi, who were planning/conspiring to commit untoward and anti-national acts/attacks. Ten accused persons were arrested from the spot while five accused persons were absconding. The charge sheet in respect of the aforesaid FIR was annexed with the affidavit as Ex. I.

(b) Along with the supplementary affidavit (Ex. PW-26/2), the witness has annexed various documents consisting of literature showing the activities of SIMI, seized during the course of investigation of the aforesaid case. The witness in his examination-in-chief has stated that he had arrested 13 accused persons whose names are given in the charge sheet itself and four accused persons were shown by him in the final report as absconding.

(c) In his cross examination by Mr. Ashok Aggarwal, Advocate, PW-26 admitted that he was not the member of the raiding police party but has stated that the accused persons, at the time of their arrest, were talking about the activities of the SIMI and Jihad. Membership forms of SIMI were also recovered from them and their previous records also show their association with SIMI. The witness has stated that he do not know as to whether Al Furkan magazine printed and published in Pakistan has any connection with SIMI but volunteered that it contained objectionable and seditious material. He admitted that the magazine does not use the word SIMI. The witness denied the suggestion that Nawa-e-Jihad, Afghan magazine, does not have any connection with the organization SIMI and volunteered that it does not bear/use the word 'SIMI', however, it is connected with the organization SIMI. The witness also admitted that he did not make any attempt to have the statements of the accused persons recorded under Section 164 of Cr.P.C.

(d) This witness also testified regarding recovery of seditious material. The recovery of this material coupled with the fact that at the time of their arrest the accused persons were talking about SIMI and Jihad clearly shows

that though the organization SIMI may be banned on paper but disgruntled, misguided, indoctrinated youths are still proceeding ahead with the illegal agenda of spreading hatred amongst different communities and thus posing a threat to the national unity and integrity.

**(VIII) At Ahmedabad in Gujarat:**

At Ahmedabad, the Central Government examined the following witnesses :—

- (i) Mr. Mayur Jagmalbhai Chavda, Assistant Commissioner of Police, Crime Branch, Ahmedabad City, Gujarat, (PW-27); and
- (ii) Mr. Vajesinh Vakhatsinh Rathod, Assistant Commissioner of Police, F-Division, Surat City, Gujarat, (PW-28)

109(a). PW-27, Mr. Mayur Jagmalbhai Chavda, Assistant Commissioner of Police, Crime Branch, Ahmedabad City, Gujarat, has proved his affidavit Ex. PW-27/1. Along with his affidavit, he has filed copies of the details of FIR of seven cases along with English translation in respect of which he was the investigating officer (Ex. A). In his examination-in-chief, he has stated that FIR No. 236/2008 of Shahi Baug Police Station was registered under Sections 120(B), 121A, 124A, 153A, 302, 307, 465, 468 & 471 of IPC, Sections 3, 5, 6 & 7 of Explosive Substances Act and Sections 10, 13 & 16 of Unlawful Activities (Prevention) Act, 1967 and the charge sheet filed in respect of the same (Ex. B) has been treated as the lead case by the Trial Court. He further stated that more than 20 charge sheets have been filed in respect of serial bomb blasts which had taken place at various places in Ahmedabad, which have been clubbed together. Around the same time, cases pertaining to the bomb plantation, which were defused, in Surat were also registered. Those cases registered in Surat have also been transferred to the Special Court in Ahmedabad to be tried along with the lead case FIR No. 236/2008. He also stated that in all, there are 70 accused persons who have been arrested till date. Out of these 70, charges against 64 accused persons have already been framed and they are facing the trial. Charges against the six accused persons have not been framed. Apart from these accused, there are 28 other suspects in the case, who are absconding or yet to be arrested. The witness has further stated that during interrogation of the accused persons by him, it was learnt that these accused persons were erstwhile members of the banned organization SIMI and they had also provided shelter to the persons who had absconded and all these 70 accused persons and some of the absconding persons are involved in cases pertaining to offences under the Unlawful Activities (Prevention) Act, 1967 in other States also.

(b) In his cross examination by Mr. Ashok Aggarwal, Advocate, PW-27 has stated that he does not recall how many witnesses are termed as star witnesses in the charge sheets and that he will not be able to state orally the year in which the statements of these star witnesses were recorded under Section 164 Cr.P.C. The witness has further stated that he has filed the copy of the charge sheet in support of

his statement that Indian Mujahiddin is the new name of the banned organization SIMI, wherein it has been stated that the activities of the banned organization SIMI are being carried on under the name of Indian Mujahiddin. He stated that the connection between the banned organization SIMI and the Indian Mujahiddin is also reflected in the various documents annexed along with the charge sheet. The witness has stated that he had filed the supplementary charge sheet where the allegations regarding stealing of cars and making of bombs were levelled against the accused persons but denied the suggestion that he had no material in order to substantiate the said allegations. The witness also denied the suggestion that large number of Muslim youths were illegally detained and tortured after the blast and that their statements under Section 161 Cr.P.C. were recorded after torturing them.

110(a). PW-28, Mr. Vajesinh Vakhtsinh Rathod, Assistant Commissioner of Police, F-Division, Surat City, Gujarat, was examined orally. In his examination-in-chief, he has stated that he has been appointed as the investigating officer on 25-7-2011 in respect of 15 Surat bomb plantation cases and subsequent thereto he arrested five absconding accused persons. Out of these five accused persons, supplementary charge sheet has already been filed against four accused persons, which is pending trial in the Special Court. So far as the fifth accused, Mohd. Abrar, is concerned, the supplementary charge sheet against him is not yet filed as the case is still under investigation. He further stated that during his investigation, he learnt that some of the accused persons became members of the banned organization SIMI in 2005, 2006 or later years and that although the organization has been banned officially, but surreptitiously, it is carrying on its activities.

(b) In his cross examination by Mr. Ashok Aggarwal, Advocate, PW-28 has stated that the statements of these accused persons were recorded while they were in police custody. He denied the suggestion that he had no material available with him to make a statement that these accused persons were members of SIMI or joined the said organization at any point of time. He also denied the suggestion that he has no proof to show that the banned organization SIMI is functioning as on date.

(c) It would be travesty of truth in case the submission of Mr. Aggarwal that there is no proof to show that banned organization is not functioning, is accepted. The very fact that the last report of the Tribunal upholding the ban on the organization was received is itself indicative of the fact that unlawful, rather criminal and illegal, activities of the organization are being carried on through or under new names like Indian Mujahideen etc.

#### (IX) At Hyderabad in Andhra Pradesh :

At Hyderabad, the Central Government examined the following witnesses :—

I. Mr. M. Nagesh Nara Rao, Deputy Suptd. of Police, Counter Intelligence Cell P.S. Hyderabad, Andhra Pradesh, (PW-29);

2. Mr. V. N. V. Satyanarayana, Addl. Suptd. of Police, Eluru, W.G. District, Andhra Pradesh, (PW-30);
3. Mr. K. R. Nagaraju, Asstt. Commissioner of Police, Special Investigation Team, Hyderabad City, Police, Hyderabad, (PW-31);
4. Mr. G. Guru Raghavendra, Inspector of Police, Abid Road Police Station, Hyderabad City, Andhra Pradesh, (PW-32);
5. Mr. G. Girish Rao, Inspector of Police, Narayanaguda P.S., Hyderabad City, Andhra Pradesh, (PW-33);
6. Mr. V. C. Sajjanar, Deputy Inspector General of Police, C.L. Cell, Intelligence Department, Andhra Pradesh, (PW-34);
7. Mr. B. Bhaskar, Inspector of Police, C.I.D., E.O.W., Hyderabad, Andhra Pradesh, (PW-35).

111(a). PW-29, Mr. M. Nageshwara Rao, DSP, PS Counter Intelligence Cell, Hyderabad proved his affidavit Ex. PW-29/1. In his affidavit the witness has deposed in respect of two FIRs, viz. (i) CR No. 01/2009 under Sections 307, 324, 332 read with Section 34 IPC and Sections 27(i)(A) of the Arms Act and Sections 120B, 121, 121(A), 122, 124(A) IPC and Sections 13(1)(a)(b), 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967; and (ii) CR No. 02/2009 under Sections 120(B), 302, 307, 121, 121(A), 122, 124(A) IPC and Sections 25 & 27 of the Arms Act, 1959 read with Section 34 IPC and Sections 13(1)(a)(b), 16, 18, 20 of Unlawful Activities (Prevention) Act, 1967.

(b) In CR No. 01/2009, it is alleged that accused Viquar Ahmed, while under surveillance, resisted the surveillance team of intelligence on 3-12-2008 and opened fire on the police party. He was able to escape with the help of his two associates after injuring two police personnel, who had to be treated at the hospital. Pursuant to this incident FIR No. 358/2008 dated 3-12-2008 was registered at PS Kanchanbagh which was subsequently re-registered as FIR No. 01/2009 at PS Octopus on 16-6-2009. Charge sheet in this case has been filed on 18-2-2011 and the matter is pending trial.

(c) It is claimed in the affidavit that accused Viquar Ahmed is a close associate of Moutasin Billa, a SIMI activist and son of Maulana Abdul Alim Ishali, active member of Jamaat-e-Islami Hind and advisor to SIMI. It is also alleged that accused Viquar Ahmed had earlier also been actively involved in propagating jihad and further in May, 2007, he gave a hard disk containing jehadi literature, training camps and speeches of Maulana Maqsood Azhar etc. to Jaber, Yaser and Moutasin Billa, which was handed over to Safdar Nagori, erstwhile acting President and Secretary General of SIMI. It is further alleged that accused Viquar Ahmed has friends of jehadi mentality and people who are sympathizers of SIMI and the other front organizations of SIMI, viz. Darsghah-Jehad-O-Shahadat and Tahrik Tahaffuz Shahar-e-Islam.

(d) In CR No. 02/2009 accused Viquar Ahmed along with his associates is alleged to have opened fire on two police

personnel after confirming that they were Hindus. One of the attacked police personnel died on way to the hospital and the other was admitted as an in-patient. Pursuant to the incident FIR No. 157/2009 dated 18-5-2009 was registered which was subsequently re-registered as FIR No. 02/2009 on 16-6-2009 at PS C.I. Cell, Hyderabad. The investigation of the said FIR revealed that accused Viqur Ahmed and his associates have close connections with SIMI, including its militant cadres and the Indian Mujahiddin. However, in view of the ban on SIMI, they had floated another organization under the name of Tahreek-Galbha- e-Islam (TGI). Investigations also revealed that the aim of TGI is to eliminate the enemies of Islam and to take revenge on police personnel who killed the Muslims in the firing after the Mecca Mosque blast.

(e) PW-29, along with his affidavit, has also annexed the confessional statement of Viqur Ahmed, recorded while he was in police custody. This statement was recorded on 14-7-2010 by the Deputy Suptd. of Police, PS Octopus, Hyderabad in the presence of two panchayatdars. In the said confessional statement, the accused admitted that after reading several articles on Gujarat Communal Riots and coming to know about the alleged atrocities on Muslims and burning of Muslims alive by Sangh Parivar activists, he started downloading material from various Jehadi websites like Al-Musra, Al-Furkan.com etc. and collected Jehadi literature, speeches of Maulana Masood Azhar etc. and stored the same in CDs to motivate youth towards Jehadi ideology. This literature on CDs was handed over to Safdar Nagori through Amjad, Arshad and Javed, which was later used to train SIMI cadres during their training camps. He further admitted having indulged in a number of robberies and murders and procured arms and ammunition for commission of the crimes. In his other confessional statement recorded by Mr. S. Srinivasa Rao, Inspector of Police, Octopus, in the presence of two panchayatdars, Viqur Ahmed has admitted that he along with his cousin Amjad @ Suleman, Dr. Haneef and Zakib decided to float Tahreek-Galbha-e-Islam with the sole aim of eliminating the enemies of Islam and take revenge on police personnel who killed the Muslim in firing after Mecca Mosque blast at Hyderabad and to implement the Shariah Law in the country.

(f) In his cross-examination, PW-29 has denied the suggestion that accused Viqur Ahmed is not connected with the two cases or that the name of SIMI has been illegally interpolated to bring about the connection. He has further stated that even though Tahreek Tahaffuz Shahar-e-Islam (TTSI) is not a banned organization but at the time of the death of Osama Bin Laden, they had conducted prayers for peace to his soul. During his cross-examination, he also produced a copy of the print out downloaded from internet, marked 'X', in respect of the Daily Siyasat, which shows the prayer meeting being conducted for Osama Bin Laden. He has further stated that the said organization is involved in conducting Jehadi activities. He also denied the suggestion that the

confessional statement of Viqur Ahmed is concocted or false. He also denied the suggestion that there is no material to show that SIMI continues to exist.

(g) This is one of the most important witness who has testified regarding the activities of the banned organization in the State of Andhra Pradesh. It seems from the testimony of the witness that the tentacles of the banned organization have deep roots in the State and the unlawful activities of the banned organization are being carried by highly motivated persons owing allegiance to the said organization.

(h) PW-30, Mr. V.N.V. Satyanarayana, Addl. Superintendent of Police, Eluru, West Godavari District, Andhra Pradesh, appeared in the witness box and proved his affidavit Exh. PW-30/1. The witness has stated that he arrested the accused Viqur Ahmed vide arrest memo dated 15-7-2010 (Ex. P-2) and recorded his panchnama/statement in CR No. 02/2009 of PS C.I. Cell, Hyderabad, in the presence of panchayatdars (Ex. P-1).

(i) In his affidavit the witness has stated that the accused Viqur Ahmed is a close associate of Moutasim Billa, brother of late Mujahed Saleem, SIMI activist and s/o Maulana Abdul Aleem Ishali, active member of Jamat-e-Islami Hind & advisor to SIMI. He further stated that the accused was also a close associate of Baleequddin @ Jaber, who is President of TTSI (Tahreek Tahaffuz Shahar-e-Islam, which is a front organization of SIMI) and an accused in Haren Pandya murder case. He also stated that Viqur Ahmed and his associates have close connections with SIMI (including its militant cadres) and Indian Mujahiddin, but since there is a ban on SIMI, they have floated a new organization under the name of TGI so that the activities of SIMI and Indian Mujahiddin can be continued un-interrupted.

(j) The witness has annexed the seizure memo-cum-confessional statement of the accused, Viqur Ahmed, along with his affidavit (Ex. P-1). In the seizure memo it is mentioned that pistols, magazine containing 8 rounds of live cartridges, pen drives containing jehadi literature and other objectionable items were recovered from the accused. In his confessional statement, the accused admitted that he procured air guns and other weapons for committing robberies. He also admitted that in June, 2007, he looted the e-seva centre, Banjara Hills and robbed the cash of Rs.2,60,000 and while escaping he opened fire on security guard who tried to catch him and injured him. He also admitted that after reading several articles on Gujarat Communal Riots and coming to know about the alleged atrocities on Muslims and burning of Muslims alive by Sangh Parivar Activists, he started downloading material from various jehadi websites like Al-Musra, Al-Furkan.com etc. and collected Jehadi literature, speeches of Maulana Masood Azhar etc. and stored the same in CDs to motivate youth towards Jehadi ideology. This literature and the CDs were handed over to Safdar Nagori through Amjad, Arshad and Javed, which was later used to train SIMI cadres during

their training camps. He further admitted having indulged in a number of robberies and murders and procured arms and ammunition for commission of the crimes.

(d) In his cross-examination by Mr. Ashok Aggarwal, Advocate, PW-30 stated that he apprehended accused Viqar Ahmed along with two more accused persons on 14-7-2010 at 7:00 pm after which he conducted their personal search and recorded their statements and thereafter showed their formal arrest on 15-7-2010 in the morning at police station. He further stated that he started the recording of the confessional statement of the accused Viqar Ahmed at about 19:15 hours and finished it by 21:30 hours. He admitted that the questions were put to the accused in Hindi and his answers were also in the same language but the statement was recorded in English after translation. He also admitted that he simply asked the question to the accused as to what had happened, whereupon the accused narrated the entire sequence of events which is recorded in the confessional statement. He denied the suggestion that one of the panch witnesses had signed the statement on 15-7-2010 (the portion where the witness has put the date as 15-7-2010 is encircled as portion 'X' and stated that by 10.00 pm, everybody, including the accused and panch witnesses, signed the statement. He also denied the suggestion that the accused had not made the statement voluntarily and that the statement was signed by the panch witnesses later and not at the time of recording of the statement. He further denied the suggestion that Viqar Ahmed was coerced to make the statement and because of this reason, he did not take any steps to record the statement under Section 164 Cr.P.C. and that the primary purpose of recording this statement was to make out a connection between SIMI and these cases.

(e) PW-31, Mr. K.R. Nagaraju, Assistant Commissioner of Police, Special Investigation Team, Hyderabad, Andhra Pradesh, appeared and proved his affidavit exhibit PW-31/1. The witness in his affidavit has deposed in respect of three FIRs, viz. (i) FIR No. 287/2011 registered on 26-10-2011 by Central Crime Station CCS/SIT, Hyderabad under Sections 120B, 121A, 125, 126 IPC and Sections 10, 13 & 3 of Unlawful Activities (Prevention) Act, 1967 (Ex. P-1); (ii) FIR No. 380/2011 registered on 22-10-2011 by PS Begumpet, Hyderabad under Sections 420, 468, 120B IPC; and (iii) FIR No. 87/2010 registered on 14-5-2010 by PS/SIT Hussaini alam, Hyderabad under Sections 302, 120-B, 122, 123, 124A & 34 of IPC, Sections 25(1)(A) & 27 of Indian Arms Act and Sections 16, 18 & 20 of Unlawful Activities (Prevention) Act, 1967.

(b) In FIR No. 287/2011, it is stated that in terms of memo received from DCP, East Zone vide No. 438/DCP/EZ/Camo/2011 dated 1-9-2011 to register a case under appropriate Sections of law about the unlawful activities of the accused persons in Saidabad, Hyderabad and to thoroughly investigate the involvement of the accused persons Mr. Syed Afak Iqbal @ Danish Iqbal @ Danish Riyazuddin, a SIMI activist, who was arrested on 21-6-2011 by Gujarat Police, this FIR was registered. It is alleged that during the

interrogation of the accused by Mayur J. Chavda, Assistant Commissioner of Police, Crime Branch, Ahmedabad City, it was revealed that the said accused is an active member of SIMI.

(c) During the investigation, it was revealed that during the period when Shahid Badar was the president of SIMI, Safdar Nagori had formed a new format of SIMI in the name of SIM. Afaq Iqbal had joined the said group of Safdar Nagori and had attended the Choral (M.P.) and Waghmon (Kerala) Training Camps in July 2007 & December, 2007 respectively wherein various kinds of trainings were imparted including the making of petrol bombs besides Jehadi speeches being delivered on Godhra riots and Babri Masjid demolition. It is further alleged that the accused Afaq Iqbal in October, 2009 had given shelter to the persons accused in the Ahmedabad serial bomb blasts namely Tausif, Mujib and Abdulrajik Mansuri. The attested copy of the statement of Afaq Iqbal recorded in Gujarati along with its English translation is also annexed with the affidavit (Ex. P-2).

(d) In FIR No. 380/2011, it is alleged that the accused Afaq Iqbal obtained SIM cards from Airtel and Tata Indicom Cellular Services by furnishing fake and forged documents under the name Manzor Aslam S/o Jamil Khan, R/o Road No. 10-C, Gayathri Hills Colony, Jubilee Hills and another one in the name of V. Mohan Babu, R/o 4-15, Jagerpally, Pedda Aruvedu, Prakasham District AP. During his stay at Hyderabad, he made efforts to re-group SIMI cadres. A complaint letter dated 22-10-2011 in this regard has been received from the Nodal Officer, Bharti Airtel Ltd. addressed to the Police Inspector, PS Begumpet along with various attested copies of the documents furnished by the accused to obtain SIM cards (Ex. P-4).

(e) In FIR No. 87/2010, it is alleged that on 14-5-2010, Hyder Baig, ASI of Kamatipura PS, PC 9884 of Hussaini alam PS and HC 627, PCs 811, 649 and 1077 of APSP 11th BN were on picket duty at Volga Hotel "T" Junction, Himmathpura in view of the Friday Prayers. After Friday prayers, the Civil PC 9884, G Santha Rao, and APSP PC 649, U. Ramesh, remained at the picket. At about 4.00 pm. two unknown persons came on a two wheeler and suddenly fired 3 rounds on them with "weapon, due to which PC 649 of 11th BN, APSP, U. Ramesh, received bullet injuries on his chest, back side of left waist and left forearm. Immediately, injured PC 649, U. Ramesh, was shifted to Osmania General Hospital, Hyderabad for treatment, where the duty doctor declared him as brought dead. It is further alleged that Tahreek Galba-e-Islam" (TGI) a terror group claimed the responsibility of killing the constable as a revenge of killing of Muslims in the police firing during Bomb Blast at Mecca Mosque on 18-5-2007.

(f) The accused, Viqar Ahmed, who was arrested on 14-7-2010 by PS Octopus in CR No. 2/2009, was re-arrested in this case by filing P.T. Warrant (Body warrant) under Section 267 Cr.P.C. and regularized his arrest in the case on 23-7-2010. During the course of investigation, it has been revealed that the said Viqar Ahmed had killed the above

mentioned constable namely U. Ramesh. It was further revealed that the accused Viquar Ahmed along with his cousin Amjad, Dr. Haneef, Riyaz and Jaber had formed a militant group in the name of Tahreek-Galba-e-Islam (TGI) in August, 2008. The aim of TGI is to eliminate the police personnel who are responsible for the killing of Muslims after the blast at Mecca Masjid on 18-5-2007, targeting several Hindu leaders of RSS and Bajrang Dal etc. The investigation further revealed that the accused prepared seditious matters and stored them in a Hard Disk and gave it to Mohd. Baleeghuddin which was later handed over to Safdar Nagori.

(g) The witness has also annexed attested copy of report dated 14-5-2010 by G. Santa Rao, constable which led to the FIR 87/2010 (Ex. P-6) and certified copy of the panchanama/ statement of the accused Viquar Ahmed dated 18-8-2010 (Ex. P-7). The witness has stated that the charge sheet dated 11-1-2011 in respect of FIR No. 87/2010 was filed by his predecessor before the Trial Court (Ex. P-8).

(h) In his cross-examination by Mr. Ashok Aggarwal, Advocate, PW-31 admitted that FIR No. 287/2011 has been registered on the basis of confession made by Afaq Iqbal and that the said statement has been recorded by the Gujarat Police. He also admitted that the said FIR was registered at the instance of DCP, East Zone by the SHO of the concerned police station. He further admitted that he did not make any effort to get the statement of Viquar Ahmed recorded under Section 164 Cr.P.C. But he denied the suggestion that he had no other material to show the connection of these cases with SIMI except the two confessional statements. He further denied that SIMI's name has been maliciously interpolated in these cases and that the statements which he made with regard to SIMI are false to his knowledge.

114(a). PW-32, Mr. G. Guru Raghavendra, Inspector of Police, Abid Road Police Station, Hyderabad City, Andhra Pradesh appeared and proved his affidavit exhibit PW-32/1. The said witness has deposed in respect of Crime No. 274/2011 registered under Sections 420, 468, 120(B) IPC at the Abid Road Police Station, Hyderabad City. He has stated that on 2-9-2011, a written complaint was received from one Mr. M. Srinivasa Reddy of Tata Tele Services Limited stating that a mobile connection bearing No. 8121589868 was obtained on the basis of forged/fake documents submitted by the customer. The complainant further stated that the said connection was obtained by the applicant Mr. Manjor Alam whereas it had come to their notice that he had a different name, i.e. Sayed Afaq Iqbal. The statement of the complainant is stated to have been recorded under Section 161 Cr.P.C. wherein the complainant had submitted that Mr. Afaq Iqbal, by submitting fake and forged documents in the name of Mr. Manjor Alam, had cheated their company. Copy of the complaint and the statement recorded under Section 161 are Exh. P-2 (colly). The documents submitted by accused Afaq Iqbal for obtaining the connection have also

been placed on record along with the affidavit and are Exh. P-3.

(b) The witness PW-32 has further stated that the investigations conducted in the case revealed that accused Afaq Iqbal is an active member of SIMI and that in order to avoid his arrest in the cases registered against him in Ahmedabad and Bhopal, he had changed his name and obtained the SIMI card with a fictitious name and also worked in ESN Technologies, Apex Company and ACS Company in Hyderabad. It is further stated that the accused during his stay at Hyderabad met various SIMI cadres and made efforts to re-group the SIMI cadres for continuing its activities. The accused is yet to be arrested in this case as he is stated to be presently lodged in Ahmedabad jail and is facing trial there.

(c) During his cross-examination by the learned counsel for the applicants/intervenors, the witness has stated that the confessional statement placed by him on record (Ex. P-4) was not recorded by him or in his presence but was recorded in Crime No. 203/2008 registered at PS Mani Nagar, Ahmedabad. The witness has denied the suggestion that the averments made by him, with regard to the connection of SIMI with the activities of the accused person as also the statement that the FIR in question is based solely on alleged confessional statements are false.

115(a). PW-33, Mr. G. Girish Rao, Inspector of Police, PS Narayanaguda, Hyderabad City, Andhra Pradesh, appeared and has proved his affidavit exhibit PW-33/1. The witness has deposed in respect of Crime No. 245/2011 registered at PS Narayanaguda dated 15-7-2011 under Section 177/419 IPC. It is stated by the said witness that a Memorandum dated 13-7-2011 was received from the Joint Commissioner of Police, Special Branch, Hyderabad informing that one Muneer Deshmukh son of Munnawar Deshmukh, ex-National Secretary SIMI, was arrested in Crime No. 663/2000 under Section 153(A) and 153(B) IPC by the Anti Terrorist Squad, Bhopal on 24-11-2000 and that the said Muneer Deshmukh later on came to Hyderabad and resided there and obtained driving license, pan card, ration card, gas connection and opened bank account on fictitious name as Muneer Ahmed son of Iftikar Ahmed by producing fake documents. The accused also got employment in an IT consulting company at Himayat Nagar, Hyderabad in a fake name in order to hide his real identity and evade his arrest by the Bhopal police. Accordingly, FIR No. 245/2011 was registered against the accused, as noted above.

(b) The witness has claimed that during the course of investigation the association of accused with SIMI came to light. It was revealed that number of Muslim youths and sympathizers of SIMI met the accused at his residence during his stay in Hyderabad and that he made efforts for re-grouping the activists of SIMI.

(c) In his cross-examination the witness has stated that the averments made by him are on the basis of source information even though the said source information has not been filed along with the affidavit. The witness has

denied that the organization SIMI has ceased to exist after September, 2001 or that they do not conduct any activity anymore.

(d) The confessional statement of the accused Munee Deshmukh has been examined. It was recorded on 23-12-2011 in the presence of two panch witnesses. The accused Munee Deshmukh in this confessional statement has given a detailed account of his initiation in the SIMI cadres, his holding the position of Zonal Committee Member, Office Secretary/All India Secretary in the year 2000.

116(a). PW-34, Mr. V. C. Sajjannar, IPS, Deputy Inspector General of Police, C.I. Cell, Intelligence Department, Hyderabad, Andhra Pradesh appeared and proved his affidavit as Exh. PW-34/1. The witness is the Nodal Officer for the State of Andhra Pradesh for SIMI related matters. He has stated that despite the ban imposed by the Central Government in the past on SIMI, as per the reports of the Intelligence Agencies and the investigations conducted in the various cases, it has been revealed that the members of SIMI are still involved in carrying on unlawful activities of SIMI in a clandestine manner thereby disrupting communal harmony and indulging in anti-national activities and actions which are detrimental to the sovereignty and integrity of India.

(b) The witness has also placed before the Tribunal a sealed envelope containing confidential intelligence information on the activities of the SIMI cadres. The contents in the sealed envelope have been examined and are kept on record.

(c) The witness has given a brief summary of all the cases registered against the SIMI cadres in the State of Andhra Pradesh.

(d) In his cross-examination, the witness has denied the suggestion that SIMI ceased to exist after September, 2001 when it was banned and that no activities have been conducted by the members of SIMI or on its behalf by anyone since that date. The witness re-affirmed that SIMI continues to exist and is carrying on its activities surreptitiously.

117(a). PW-35, Mr. B. Bhaskar, Inspector of Police, CID, Hyderabad, Andhra Pradesh appeared and proved his affidavit exhibit PW- 35/1. The witness in his affidavit has deposed in respect of Crime No. 835/2002 registered on 21-11-2002 at PS Saroor Nagar under Sections 302, 307 IPC and Sections 3, 4 and 5 of Explosive Substances Act and Section 3(3) of POTA in respect of a bomb blast in front of Sai Baba Temple at DSNR. There were 11 accused in the said FIR namely Abdul Bari @ Abu Hamza; Mohd. Azam; Syed Azeez; Mohd. Irfan Ali Khan; Syed Abdul Nayeem; Mohd. Abdul Razak @ Masoor, Syed Akhil @ Hafeez; Altaf Ahmed; Abu Ayub Ansari @ Anees, Syed Salauddin Ahmad @ Mohd. Mubarizuddin @ Saeed Salauddin Sheikh @ Syed Salauddin Salar @ Ahmed; and Mohd. Shfique Muzavar @ Sadiq.

(b) In CR No. 835/2002, it is alleged that a meeting was organized in Dubai by Abdul Bari between 23-8-2002 to 27-8-2002 along with Mohd. Irfan Ali Khan, Mohd. Abdul Razak, Syed Akhil, Anees Moinuddin and Syed Salauddin, who are SIMI activists along with others whose identity was not known. It is alleged that in the said meeting it was decided to cause bomb blasts near temples in India so as to create communal clashes and to disturb the communal harmony existing in Indian society. In pursuance of the above conspiracy, on 21-11-2002 at about 8.00 pm, Abdul Bari executed the bomb explosion near Sai Baba Temple at Dilsukh Nagar, through Mohd. Azeez and Syed Azeem, both of whom placed explosives along with timer device in a scooter and kept the scooter near the parking place of the temple and left the scene, which resulted in killing of 2 persons and injuring 20 others. It is further alleged that for this operation, Mohd. Irfan Ali Khan provided funds to Abdul Nayeem who provided logistical support to Mohd. Azam and Syed Azeez in Hyderabad. Mohd. Azam was shot dead on 23-11-2002 under Uppal P. S. limits and Syed Azeez was shot dead on 24-11-2002 at Rekurti Village of Karimnagar District in separate exchange of fires with police in self-defence while the accused Mohd. Shfique Muzaav is still absconding.

(c) Investigation of the above case revealed that accused Syed Salauddin actively participated in and has been involved in the unlawful activities of SIMI in India. He organized various SIMI meetings throughout India, visited Dubai and established contacts with SIMI cadres at Dubai and attended their meetings, established contacts with Lashkar-e-Taiba Cadres and organized meetings with Muslim youth and incited them with Jihadi ideology with the help of Abdul Bari and Abdul Razak. The investigation further revealed that SIMI's ideology does not believe in democracy and SIMI has various cover organizations such as Tahreek Talaba-e-Arabia/TTA, Students Welfare Trust, Khair-e-Ummath, Islah-e-Mashere, Fargree-e-Jamat, Kidmath-e-Khalq, Islamic Youth Center and Islamic Students Association.

(d) The first charge sheet in respect of the aforesaid FIR was filed on 5.4.2002 and is pending trial before the Trial court. The witness has handed over a certified copy of the same during the course of recording of his evidence and the same is exhibit D/I. The additional charge sheet was filed against the accused Anees Moinuddin and Mohd. Shafique Muzavar on 1.11.2011 (Ex. P-I).

(e) PW-35, along with his affidavit, has also annexed the attested copy of panchanama/statement of Syed Salauddin dated 25.7.2011 and certified copy of his panchanama/statement dated 31.7.2011 recorded in the presence of panchayatdars [Ex. P-2 (colly)] and the attested copies of permission to prosecute Syed Salauddin dated 14.11.2011 issued by the Collector and District Magistrate, Ranga Reddy District as well as Government of Andhra Pradesh (Ex. P-3).

(f) In his confessional statement dated 25-7-2011, the accused Syed Salauddin stated that he was elected as All India SIMI President during the period from February, 1998 to February, 2000 and that he visited Babri Masjid site at Faizabad to collect the particulars of Karasevaks, who are the main persons responsible for the demolition of Babri Masjid, for taking revenge against them. He further stated that in 1999, a meeting was organized at Aurangabad which was attended by about 400-500 persons. During the meeting Sk. Mahaboob Ali delivered provocative speech on Babri Masjid demolition and stated that if Ram Mandir is constructed at the Babri Masjid site, he would demolish the same by planting bombs. He further stated that during his stay at Dubai, he developed contacts with LeT cadre of Pakistan and that he along with Abdul Razzaq and Abdul Bari @ Abu Hamza with the help of Irfan Ali Khan used to attend meetings and brain wash the Muslim youth with Jihadi ideology, who have come to Dubai in search of employment. In his confessional statement dated 31-7-2011, he stated that after arriving in Dubai, he re-established his contacts with ex-SIMI members, who have gone to Dubai and that one person namely Jilani introduced him to his associates viz. Farha, Shareef @ Shadin, Anwar, Riyaz and Sultan and told him that all the above associates were working for Indian Mujahideen along with Riyaz Bhatkal and Iqbal Bhatkal, who are responsible for serial blasts, which occurred across the country.

(g) In his cross-examination, PW-35 admitted that the name of SIMI is not mentioned in the first charge sheet. The witness denied the suggestion that the statements of Syed Salauddin, Mohd. Irfan and Abdul Nayeem were false and concocted and that is why no steps have been taken to record their statements under Section 164 Cr.P.C. He also denied the suggestion that apart from these statements, there are no other material to connect SIMI to the activities of these persons or organizations so as to brand it as a terrorist organization and that there is no connection between SIMI and the aforesaid organizations and the name of SIMI has been maliciously interpolated.

**(X) At Indore in Madhya Pradesh :**

At Indore, the Central Government examined the following witnesses :—

1. Mr. Navratan Singh, Deputy Superintendent of Police, CSP Hanumanganj, Bhopal, Madhya Pradesh (PW-36);
2. Mr. Ghanshyam Malviya, City Superintendent of Police, Misrod, Madhya Pradesh (PW-37);
3. Mr. Anirudha Shyamsunder Nandedkar, Deputy Superintendent of Police, CID (Crime), Aurangabad Unit, Maharashtra (PW-38);
4. Mr. Gajendra Singh Vardhaman, City Superintendent of Police, Distt. Ratlam, Madhya Pradesh (PW-39);

118(a). PW-36, Mr. Navratan Singh, Deputy Superintendent of Police, CSP Hanumanganj, Bhopal, Madhya Pradesh appeared and proved his affidavit exhibit PW- 36/1. The witness in his affidavit has deposed in

respect of FIR No. 431/2010 registered on 23.8.2010 at PS Hanumanganj, Bhopal under Sections 395, 397 IPC.

(b) In FIR No. 431/2010, it is alleged that on 23.8.2010 at 10:30 hours at Bhopal Plaza Building at Shop No. 101, 102, 103, Hamidia Road, Bhopal, some unknown persons entered the branch of Manapuram Gold Finance Company with katta (pistol) and knife and robbed gold ornaments (weighing 12 kg) and cash, having total worth Rs. 1,46,41,000. The witness in his affidavit has stated that on 1.7.2011, information was received from S.P. Bhopal vide letter No. SP(North)/bpl/reader/383-A/11 that accused persons in CR No. 04/2011 (Abu Faisal, Ikrar Shaikh, Azazuddin, Mehboon) and CR No. 05/2011 (Shaikh Mujib Ahmed, Mohd. Aslam, Mohd. Habib and Mohd. Sajid) of ATS, Madhya Pradesh had revealed their involvement in activities of SIMI and also admitted to have committed dacoity in Manapuram Gold Finance Company at Bhopal Plaza on 23.8.2010. During investigation accused Abu Faisal, Ikrar Shaikh, Azazuddin were arrested and were taken on police remand. During interrogation on 13.9.2011, the accused admitted having committed dacoity in Manapuram Gold Finance Company on 23.8.2010 along with other accused persons. The supplementary charge sheet in respect of the aforesaid FIR was filed on 7.3.2012 (Ex. E).

(c) PW-36, along with his affidavit, has also annexed the true copy of the statements of accused namely Abu Faisal, Mohd. Ikrar and Mohd. Azazuddin; Shaikh Mujib Ahmed and Mohd. Aslam; and Jakir Hussain (Ex. B, C & D respectively).

(d) In his confessional statement the accused Abu Faisal stated that after arrest of Safdar Nagori and other members, he became the Head (Aamir) of the SIMI organization. He further stated that after the arrest of the fund raiser of the organization, Mohd. Ali, Musa and Irfan, SIMI witnessed money crisis due to sudden set back of some financial supporters due to increasing fear of police interference and in reaction to these problems, he called a meeting with Ikrar, Aslam, Zakir, Mujeeb, Aizazuddin, Mehboob and Ahmed for fulfillment of the organizational needs and they all agreed to do robbery in banks to get money. After that while residing in Dewas, he inquired and did recce of many banks. He admitted that he along with other accused looted the gold and cash from Manapuram Gold Finance Company on 23.8.2010 and also admitted killing of the constable Sitaram and two other at Khandwa. The accused also admitted doing other bank robberies. The other accused in their confessional statements have also admitted doing various bank robberies including the robbery at Manapuram Gold Finance Company.

(e) In his cross-examination, PW-36 stated that he has not attached a copy of the main charge sheet as he had requested the SHO concerned for discharge of two accused. A copy of the discharge letter, in Hindi, addressed to SHO is produced by the witness and is exhibited as EX.DA. He denied the suggestion that the above-mentioned persons have been made accused on the basis of the letter dated

[भाग II-खण्ड 3(ii)]

1-7-2011 received from SP, Bhopal, and that the statements of all the accused persons are concocted and false and that is the reason why he did not get them recorded under Section 164 Cr.P.C. He also denied the suggestion that these accused persons have no connection with SIMI and their names have been deliberately associated with the banned organization SIMI.

(f) No question has been put in the cross-examination which could discredit the witness so far as his testimony regarding looting of financial institutions is concerned. This looting has been essentially done for the purpose of raising funds for the illegal activities of the SIMI organization despite the continuous ban on it.

119(a). PW-37, Mr. Ghanshyam Malviya, City Superintendent of Police, Misrod, Madhya Pradesh appeared and proved his affidavit exhibit PW- 37/1. The witness in his affidavit has deposed in respect of FIR No. 431/2010 registered on 23.8.2010 at PS Hanumangaj, Bhopal under Sections 395, 397 IPC.

(b) The witness in his affidavit has stated that he was the investigating officer of the aforesaid FIR and that he personally recorded the statements of accused Abu Faizal wherein details about the plans to commit bank robberies for the purpose of funding the SIMI organization were revealed. The witness has also personally recorded the statements of Mohd. Ikrar, Mohd. Aizazuddin, and Zakir Hussain who provided the details about the manner in which the abovementioned bank robberies were committed by the members of SIMI and how the murder of Jailer Sanjay Pandey and constable Sita Ram was planned. The witness has further stated that the aforesaid case demonstrates that despite the ban, SIMI has been clandestinely continuing with its unlawful activities and that the ban on SIMI is necessitated because of their continued unlawful activities which are highly prejudicial to the security, sovereignty and integrity of India.

(c) In his cross-examination by Mr. Ashok Aggarwal, PW-37 stated that he arrested all the six accused persons namely Abu Faisal, Ikrar Sheikh, Mohd. Aizazuddin, Sheikh Mujib, Mohd. Aslam and Zakir and that he recorded their statements on 1.7.2011. The witness has admitted that all the accused persons were under detention and their arrest was shown after obtaining permission from the court in respect of the aforesaid FIR. He denied the suggestion that he has wrongly recorded the statements of the accused persons, which was never made by them and that these statements are totally false and concocted. He also denied the suggestion that these accused persons have no connection with SIMI and their names have been deliberately associated with the banned organization SIMI.

120(a). PW-38, Mr. Anirudha Shyamsunder Nandedkar, Deputy Superintendent of Police, CID (Crime), Aurangabad Unit, Maharashtra appeared and proved his affidavit exhibit PW-38/1. The witness in his affidavit has deposed in respect of CR No. 25/2012 registered on 26.3.2012 at PS Begampura, Aurangabad City, Maharashtra under Sections 307, 333, 335, 336, 338, 352, 353, 34 IPC read with Sections 3, 25, 27 of Arms Act & Section 135 of Bombay Police Act.

(b) In CR No. 25/2012, it is alleged that on 26.3.2012 action was initiated by Anti Terrorism Squad, Aurangabad, on credible information being received from their informant that one person namely Abrar @ Ismail, who was the absconding accused in 2008 Ahmedabad case and an active hardcore member of banned organizations, Indian Mujahideen and Students Islamic Movement of India, was coming to meet his accomplices at about 12:00 noon at Aurangabad. On receiving the information, ATS Aurangabad arranged a trap near Himayatbagh area at Aurangabad. In the course of action in retaliation, firing, Abrar @ Ismail, Shaker @ Khalil Khilji were taken into custody and one accused namely Khalil @ Azhar Qureshi died due to firing by police in self defence. One police constable who was also injured due to firing by the accused persons.

(c) It is stated by the witness that panchanama of the spot was done. Three pistols and other articles of accused persons were seized from the spot. It is further stated that the investigation of the said crime was handed over to CID (Crime) Aurangabad on 29.3.2012 and from the said date, he is investigating the crime.

(d) During interrogation it is revealed that the accused Abrar @ Ismail was an active member of SIMI since 2006 and that he and other members of SIMI namely Abu Faisal, Safdar Nagori and Ameen Parvez held a meeting of SIMI members at Khandwa, MP in the year 2006, wherein the members were urged to carry on jihad to implement Islamic law in the country, to take revenge for Gujarat riots and to further work for expansion of the organization. It is further revealed that the accused in 2011 had committed dacoities in Gujarat and MP to generate funds for jihad and had also planned to loot trucks of copper scrap for the said purpose.

(e) The witness has also placed before the Tribunal a sealed envelope containing copies of the statements of the accused persons/witnesses and the panchnamas. The witness stated that the aforementioned case is under investigation and is at a crucial stage and disclosure of statements made by the accused persons/witnesses and details of the articles seized under various panchnamas are likely to hinder/adversely affect the ongoing investigations. The contents in the sealed envelope have been examined.

(f) In his cross-examination, PW-38 stated that he was appointed as the investigating officer on 29.3.2012 but denied the suggestion that he was appointed as the investigating officer after serious doubts were expressed regarding the encounter in which the accused persons are purported to have been arrested. He stated that the order regarding transferring of investigation from Crime Branch to CID was passed by his superior officers. He further stated that he is not aware whether any press conference was held by the Commissioner of Police, Aurangabad on the date of the alleged encounter or that the Home Ministry of the State of Maharashtra had made a public statement to the effect that it will have the case transferred to CID of Maharashtra police in order to get it verified as to whether it was a case of genuine encounter.

121(a). PW-39, Mr. Gajendra Singh Vardhaman, City Superintendent of Police, Distt. Ratlam, Madhya Pradesh appeared and proved his affidavit exhibit PW- 39/1. The witness in his affidavit has deposed in respect of CR No. 224/2011 registered on 3-6-2011 under Section 307 IPC, Sections 25 & 27 of Arms Act and Sections 10, 13 & 15 of Unlawful Activities (Prevention) Act, 1967.

(b) The witness in his affidavit has stated that on 3-6-2011 at about 5.15 pm, SP of Ratlam received a message from the ATS team that ATS jawans were fired at by SIMI activists. The SP immediately ordered to cordon off the city to catch the miscreants. During search operation, one accused namely Zakir was caught by the police near Hotel Palash while the other accused namely Mohd. Farhat @ Khalid was taken into custody from a vacant house near Shah Manzil, where he was hiding.

(c) During investigations it transpired that when the accused Zakir was residing at Ashok Nagar, Ratlam, the activities of SIMI organization were being conducted in the locality and terrorist activities were being planned. Funds were also collected for undertaking SIMI activities and meetings were also arranged in order to propagate and enlarge SIMI activities. During the course of investigation, a CD and other documents were seized from the custody of the accused which contained various SIMI related literature and matters related to extremism, terrorism and communalism. It is stated that the documents refer to the attack on the World Trade Centre, calling Muslims to unite against the world, transformation of Pakistan into Terroristan, and mention the attacks on Kashmir as well as Mumbai. Most significantly, the said documents include SIMI membership form. The investigation of the accused Mohd. Farhat Khan @ Khalid and Zakir Hussain @ Sadiq further revealed that they were trying to collect funds for activities of SIMI and in pursuance to this they indulged in bank robbery and they were involved in spreading their unlawful activities among the Muslim youth by inviting them for Darsh-E-Kuran and then finally by provoking them for Jihad. The witness has stated that he personally recorded the statement of Zakir, wherein he gave details about his connection with SIMI and participation in unlawful activities.

(d) In his confessional statement the accused Zakir Hussain @ Sadiq has stated that he was friends with Guddu @ Mehbob, who works as an active worker of SIMI and together they distributed SIMI pamphlets. He further stated that he also made friendship with Hussain and tried to brainwash him for Islamic extremism by showing him video clippings related to the atrocities against Muslims in Afghanistan and also provided him literature related to SIMI and Islamic Literature and urged him to recruit as many youths as possible in order to take revenge for all those atrocities and to strengthen the organization. He also contacted Chhotu @ Rafiq and Ashik and was successful in winning them for SIMI activities. He also stated that Guddu was their leader who was in contact with the higher leaders of SIMI and conveyed their messages to them.

(e) In his cross-examination, PW-39 stated that he was the investigating officer of FIR No. 224/2011, in respect of which various articles were seized from accused Mohd. Farhat. He stated that apart from the membership form of SIMI, CD and documents were seized which showed connection of the accused persons with SIMI. He admitted that in the CD, the word 'SIMI' is not used but volunteered that the modus operandi reflected in the CD makes one to draw the inference that it pertains to SIMI only. The witness also admitted that the membership forms seized from Zakir as also in other cases were blank and did not bear any serial number or the address of the organization but denied the suggestion that all these forms have been printed at the police press. The witness also denied the suggestion that the material contained in the CD pertains only to USA, Israel and Pakistan and volunteered that he had examined the material and it pertains to India also. The witness also denied the suggestion that the CD does not contain any material or any information, which can be said to be 'unlawful activity' within the definition given under the Act, and also in breach of any provision of law applicable in India. He also denied the suggestion that CDs have been planted by the police. He further denied the suggestion that SIMI has no connection with these cases and it has been maliciously implicated and that SIMI has not conducted any activities since its first ban in September, 2001.

#### (XI) At Delhi:

At Delhi, the Central Government examined the following witnesses :—

1. Mr. Ashok Kamath, Assistant Commissioner of Police, Anti Terrorism Squad, Mumbai (PW-40);
2. Mr. Sanjeev Kumar Yadav, DCP Special Cell, New Delhi (PW-41);
3. Ms. Rashmi Goel, Joint Secretary, Ministry of Home Affairs, New Delhi (PW-42);

122(a). PW-40, Mr. Ashok Kamath, Assistant Commissioner of Police, Anti Terrorism Squad, Mumbai appeared and proved his affidavit exhibit PW- 40/1. The witness has deposed in respect of CR No. 6/2010 registered with ATS Police Station, Kalachowki, Mumbai.

(b) The witness in his affidavit has stated that on 13-2-2010 at around 6.50 pm, a powerful bomb blast took place at German Bakery, North in Road, Koregaon Park, Pune in which 17 people died and 56 persons were injured and a case CR No. 83/2010 under Sections 302, 307, 326, 325, 324, 120B IPC, Sections 3, 4, 5 of the Explosive Substances Act and Sections 16, 18, 21 of the Unlawful Activities (Prevention) Act, 1967 was registered at Bund Garden Police Station, Pune but looking to the gravity and intensity of the crime perpetrated, the said offence was transferred for further investigation to the Anti Terrorist Squad, Maharashtra and the crime was re-registered as CR No. 06/2010.

(c) The investigation revealed that the explosion was a carefully planned attack calculated to terrorize the public in general by causing intensive damage to life and property. The primary objective was to undermine and reduce the faith of the common citizen in its elected Govt. and thereby destabilize the system of Govt. established by law. The investigation further revealed that one Mirza Himayat Inayat Beg @ Ahmed Beg Inayat Mirza @ Yusuf was the person who had perpetrated the crime. He was arrested on 7-9-2010 and RDX, forged documents, Hard disks etc. were seized from him. Investigations further revealed that he had committed the crime with the help of his six associates namely (i) Mohsin Ismail Choudhary, (ii) Ahmed Siddibappa Zarar @ Yasin Bhatkal, (iii) Riyaz Ismail Shabdari @ Riyaz Bhatkal, (iv) Iqbal Ismail Shabdari, (v) Fayyaz Kagzi @ Julfikar Fiyaj Ahmed and (vi) Sayyad Zabiuddin Sayyad Zakiuddin @ Zabi Ansari @ Abu Jundal. It was further revealed that the blast was carried out by Indian Mujahiddin - a frontal organization of SIMI. The investigations further revealed that the aforesaid accused persons were also wanted in various other criminal cases and were absconding. The charge sheet in respect of the aforesaid CR No. 06/2010 against the arrested and the absconding accused was filed on 4-12-2010 (Ex. A1) and the case is pending trial before the Sessions Court.

(d) In his cross-examination by Mr. Ashok Aggarwal, Advocate, PW-40 stated that he was appointed as the investigating officer of the aforesaid case in May, 2012. In reply to the question that whether he had filed any documents along with his affidavit to substantiate the averments made in paragraph 5 of his affidavit to the effect that the Indian Mujahiddin is the frontal organization of SIMI, he stated that he has filed the charge sheet which substantiates the said averments. The witness has stated that he had not recorded the confessional statement of Mirza Himayat Beg and that he had not filed the same along with his affidavit. He further stated that some material is purported to have been recovered from Mirza Himayat Beg connecting him with SIMI, however, he was not sure about the same. He denied the suggestion that no material, was recovered from accused Mirza Himayat Beg so as to connect him with SIMI. He also denied the suggestion that he filed additional evidence and is making the statement before the Tribunal only with a view to support the ban against SIMI and that SIMI has not conducted any activities since its first ban in September, 2001.

123(a). PW-41, Mr. Sanjeev Kumar Yadav, DCP Special Cell, New Delhi appeared and proved his affidavit exhibit PW-41/1. The witness has deposed in respect of three FIRs viz. (i) FIR No. 65/2010 registered on 19-9-2010 at PS Jama Masjid under Sections 307/34 IPC read with Section 27 of the Arms Act, 1959 (Ex. A); (ii) FIR No. 66/2010 registered on 19-9-2010 at PS Jama Masjid under Sections 3/4/5 of Explosive Substances Act, 1908 (Ex. C); and (iii) FIR No. 54/2011 registered on 2-11-2011 under Sections 471, 489A, 489C IPC, Section 25 of the Arms Act and Section 12 of the Passport Act (Ex. F).

(b) In FIR 65/2010 it is alleged that on 19-9-2010 at about 11:24 hours an information was received regarding 'firing on foreigners by some unknown bikers at gate No. 3 of the Jama Masjid' and during the enquiry conducted on the spot, it was revealed that two young boys, riding on a black coloured motorcycle, had opened fire upon some foreigners who were descending from a tourist bus. In the said firing incident, two Taiwanese nationals had sustained injuries. On 22-9-2010, further investigation of the case was transferred to the Special Cell/NDR. The charge sheet in the said FIR was filed and is annexed with the affidavit as Ex. A-1.

(c) In FIR 66/2010 it is alleged that on 19-9-2010 at about 14:00 hours an information was received regarding 'burning of a Maruti Car No. DL 6CD-1042 and emission of smoke from the same' at opposite Gali Gulian, Dariba Kalan, Main Road. The car was inspected by the Bomb Disposal Squad (BDS) and during inspection the car caught fire after a mild blast. During investigation, the BDS seized a number of articles from the spot. The inspection report of the car records that 'recovery of the above mentioned article suggests that a low pressure IED was planted in the car. The investigation of the said case revealed that the said car was stolen a couple of days earlier. On 21-9-2010, further investigation of the case was transferred to the Special Cell/NDR. Efforts were made to identify and trace the accused persons involved in the incident but could not yield the desired results. However, soon after the said terrorist strike, an e-mail was received by various Sections of the media claiming that it was the Indian Mujahiddin who had carried out the strike. The said e-mail was captioned 'As We Bleed, So Will You Seep'. A copy of said e-mail dated 19-9-2010 is annexed with the affidavit as Ex. E. The charge sheet in the said FIR was filed and is annexed with the affidavit as Ex. C-1.

(d) In FIR 54/2011, it is alleged that on 21/22-11-2011, on the basis of specific information, one Mohd. Quateel Siddiqui @ Sajan @ Siraj @ Vivek Mishra, suspected to be a member of Indian Mujahideen, was apprehended from near Anand Vihar Inter State Bus Terminal, Delhi. On his cursory search, one 9 mm loaded pistol made in Brazil, containing 7 live cartridges in its magazine was recovered from his possession. On the search of his bag, besides other articles, (i) fake Indian Currency notes worth Rs. 2 lacs, (ii) One loaded magazine of 9 mm pistol and (iii) one envelope addressed in the name of Seraj Ahmed, containing two Indian Passports in the name of Ahmad Ziauddin and Seraj Ahmad and one Indian Driving License in the name of Vivek Mishra, all containing the photos of the accused, were recovered. Investigation of the said case revealed that Quateel Siddiqui is a member of the banned terrorist outfit Indian Mujahideen and has been involved in several terrorist activities in India. During the course of investigation, 15 accused persons (including Quateel Siddiqui), all members of Indian Mujahideen, have been arrested and a huge quantity of explosive material, IEDs, arms & ammunition have been recovered from their

possession/at their instance from their hideouts. The witness in his affidavit has stated that despite the concerted and strenuous efforts being made in the case, 19 accused, who have indulged in terrorist activities are still wanted in this case and are absconding.

(e) The investigation of the case has revealed that out of the 15 arrested accused, 6 accused persons namely (i) Mohd. Quateel Siddiqi @ Sajan @ Siraj @ Vivek Mishra, (ii) Gauhar Aziz Khomani, (iii) Mohd. Adil @ Ajmal @ Shoeb @ Guddy (Pakistani national), (iv) Mohd. Aftab Alam @ Farooq @ Sheikh Chilly, (v) Mohd. Irshad Khan and (6) Gayur Ahmad Jamali were involved in the terrorist attack on foreign nationals and in the blast in the Maruti car, both dated 19-9-2010 near Jama Masjid Delhi. The investigation further revealed the involvement of SIMI and its activists in the said cases. The charge sheet in the said FIR was filed and is annexed with the affidavit as Ex. F-1.

(f) In his cross examination by Mr. Ashok Aggarwal, Advocate, PW-41 admitted that the averments made by him in paragraphs 8 and 10 of his affidavit to the effect that SIMI members floated a new outfit by the name of Indian Mujahideen are based on the confessions purported to have been made by Tarique Anjum Ahsan and Mohd. Bashir Hassan Talha. He also admitted that the charge sheet does not contain any mention about the organization SIMI but he denied the suggestion that the accused persons were not undertaking any activity for and on behalf of SIMI. He also denied the suggestion that SIMI has not undertaken any activity ever since the first ban imposed on it in September, 2001.

124(a). PW-42, Ms. Rashmi Goel, Joint Secretary (HR), Government of India, Ministry of Home Affairs, New Delhi appeared and proved her affidavit exhibit PW-42/1. Along with her affidavit she has annexed the copy of notification dated 3-2-2012 banning SIMI (Ex. A-1), a copy of the background note (Ex. A-2), copies of reports of previous tribunals (Ex. A-3 to A-6), copy of orders dated 6-8-2008, 11-9-2008 and 13.10.2008 in SLP (C) No. 19845/2008 (Ex. A-7) and copy of objections filed by H.A. Siddiqui and Misbah- Ul-Islam before the Tribunal headed by Hon'ble Mr. Justice Sanjiv Khanna (Ex. A-8). The witness has also handed over nine sealed envelopes containing the Cabinet Note and other Intelligence Reports received from various Intelligence Agencies etc. in respect of the activities of SIMI.

(b) In her cross-examination by Mr. Ashok Aggarwal, Advocate, PW-42 stated that her affidavit is drafted on the basis of knowledge derived from the official records and that when she assumed the present posting i.e. Joint Secretary (Human Rights) on 6-2-2012, the notification banning the organization SIMI had already been issued. She admitted that after the constitution of the Tribunal, notices were issued to the banned organization on all the addresses furnished to the Tribunal, which were compiled from the inputs received from various sources. She further stated that she was not aware as to whether the addresses

of the banned organization SIMI were furnished to the previous Tribunals also. On being asked whether she had verified the membership of the persons to whom notices were sought to be issued by the Tribunal as members of the SIMI before the same was furnished to the Tribunal, she replied that no such verification is done in the Ministry of Home Affairs as these inputs are received from various State Governments and their intelligence and police authorities giving therein the names and addresses of the persons who are purported to be the members of the banned organization. She also stated that she was not aware if any representation has been written to the Tribunal where the applicant has claimed that he had never been associated with the banned organization in the past or even now and yet notices were being issued to him by the Tribunal. However, she denied the suggestion that the absence to compile any list of members was deliberate and was actuated only with a view to brand any person as a member of the banned organization. The witness also stated that no formal communication is sent to the States inviting their opinion as to whether the ban on a particular organization should continue or not but the inputs which are received during the course of monitoring the activities of various organizations including the banned organization furnish the requisite information to the Central Govt. to decide as to whether the ban is to be continued or not.

(c) She admitted that only narrative notes are received from the States by way of inputs but volunteered that she has produced before the Tribunal all the other documents in support of the said narrative notes. She further stated that she cannot tell as to whether the draft notification sent to the Cabinet Committee on Security along with the note was modified by the said Committee or not and volunteered that it was concurred by the Ministry of Law.

(d) On being asked whether the draft Cabinet note which was sent, contained information that the Mecca-Masjid case and Malegaon blast case which were earlier attributed to SIMI activities were subsequently found to be the handiwork of Hindu extremist organization. The witness replied that she did not remember about the same. She denied the suggestion that certain averments made in her affidavit show a bias against the banned organization. She also denied the suggestion that the present ban has been imposed on SIMI on incorrect and false information supplied to the Cabinet Committee on Security. She also denied the suggestion that the present ban on SIMI is arbitrary and unjustified and that the constitution of SIMI does not contain anything unlawful nor were its activities unlawful in any manner whatsoever. She also denied the suggestion that while seeking inputs from the State Governments, the Home Ministry impliedly asked them to recommend re-imposition of ban on SIMI and send their inputs accordingly and that SIMI ceased to exist after the first ban imposed upon it in September 2001 or that its activities were legal in any manner.

**(XII) At Madurai:**

At Madurai, the Central Government examined the following witnesses:—

- I. Sh. G. Sampathkumar, Superintendent of Police, Special Division, Special Branch CID, Chennai (PW-43):

125(a). PW-43, Sh. G. Sampathkumar, Superintendent of Police, Special Division, Special Branch CID, Chennai, Tamil Nadu, appeared and proved his affidavit exhibit PW-43/I. He filed the said affidavit in the capacity of Nodal Officer of Government of Tamil Nadu. Along with his affidavit he has annexed R/1 which is a certified copy of Government Letter No. SS1/200-7/2012, dated 3-4-2012 issued by the Secretary to the Government of Public (SC) Department, Government of Tamil Nadu, appointing him as the Nodal Officer.

(b) PW-43 has also annexed R/2 (colly) which is the certified copy of Magazine 'Seithi Madal' purported to be published by SIMI in the months of May and June 1999 in Tamil language with English translation of the relevant portions. The said articles were containing seditious material, as a consequence of which, a case under the relevant provisions of law was registered by the Government of Tamil Nadu and six accused persons were put to trial because of the seditious material which resulted in their conviction. He has also handed over the certified copy of the judgment passed by the Additional District and Sessions Judge, Fast Track Court No. II, Coimbatore dated 29-2-2012 convicting five accused persons in the aforesaid case (exhibits R/3A and R/3B), which is in Tamil language and the certified copy of the Judgment passed by JM-IV Court, Madurai in CC No. 214/2010 convicting one of the accused persons namely O. S. Mohideen on 28-10-2010 in connection with an offence under Section 12(b) of Passport Act, 1967 (Ex. R4/A), which is also in Tamil language. Along with the affidavit the witness has also annexed R/5 (colly) which is an invitation purported to have been issued by an organization known as Wahadat-e-Islami Hind (Wel) at Chennai on 26-2-2012 along with its English translation with regard to holding of a conclave at Chennai.

(c) The cross-examination of the witness is not done since no one appeared on behalf of Humam Ahmed Siddiqui and Misbah-Ul-Islam even after giving the opportunity.

126. The Union of India, in all examined 43 witnesses in support of the Notification dated 3rd February, 2012 banning SIMI. All the witnesses (except the witness at Bangalore PW-12 who was dropped) were cross-examined extensively by the learned counsel representing Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam. But their testimony has substantially remained unshaken. No fact, gross contradiction or falsity has been brought about in their cross-examination generally which would make the testimony of any witness as a suspect or unworthy of reliance. On the contrary, the Tribunal is persuaded to accept their testimony in generality accepting the complicity of the banned organization, SIMI, its sympathizers, activists, ex-office bearers and members who have been functioning

under different cover names of newly created groups of persons or associations.

127. The applicants/intervenors were called upon to lead their evidence to which the learned counsel representing Mr. Humam Ahmed Siddiqui and Mr. Misbah-Ul-Islam, stated that they did not wish to lead any evidence. Their conduct of refraining to enter the witness box and not subjecting themselves to cross-examination by UOI, especially when they have cross-examined all the witnesses produced by the Central Government, leads the Tribunal to draw a presumption against them. Reference in this regard may be made to illustration (g) to Section 114 of the Evidence Act, which reads as under:—

**“114. Court may presume existence of certain facts.—**

(g) That evidence which could be and is not produced would, if produced, be unsavourable to the person who withholds it.”

128. In addition, Section 106 of the Indian Evidence Act, 1872 lays down that the onus of proof of fact, which is especially within the knowledge of a person, is on him. The exact language of Section reads as under:—

**“106. Burden of proving fact especially within knowledge.—**When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

129. The basic rule of evidence is that 'one who asserts must prove' and then there are exceptions to this doctrine. One such exception is contained in Section 106 of the Indian Evidence Act, 1872. The basis of this exception is that if a person has the knowledge about a fact which only he could have, then onus is on him to prove that fact. The simple illustration of this would be if a person caught travelling without ticket and claiming that he has the ticket must establish that he had purchased the ticket. In such a contingency, since he is contending that he had purchased the ticket and yet does not enter into the witness box to testify himself in this regard and subject himself to cross-examination nor does he produce any other evidence, the only option with the Tribunal or the Court is to draw an adverse inference against him that in case he would have testified himself to show that he was in possession of the ticket, it would have gone against him.

130. It may be pertinent here to mention that in their reply, the applicants/intervenors have taken the plea that they are ex-office bearers of the banned organization and in that capacity, they were associated with the said organization. It is also stated by them that SIMI, having been banned in the month of September, 2001, has ceased to exist and accordingly, they have also, because of their age, ceased to be the members of the said organization. It may be pertinent here to mention that the contention of Mr. Aggarwal is that since the name of the organization was starting with the word "students", only students could be the members upto the age of, say 30-35 years, as given in the constitution of the Association. Once a person had

crossed that age by efflux of time, he ceased to be its member. It is also the plea of the applicants/intervenors that after SIMI was banned in September, 2001, it has ceased to exist although, it was stated that it never indulged in any criminal activities.

131. Further, if one examines the line of cross-examination which has been conducted on behalf of the applicants/intervenors, its entire thrust, apart from trying to discredit the witnesses, has been on the issue that SIMI is not an organization indulging in illegal activities: ever since the organization has been banned, it is no more in existence and merely because some members, office-bearers or ex-members of the said organization are indulging in illegal and unlawful activities, does not mean that the organization is in existence. On the contrary, they say that the continuation of the ban on the said organization for the last more than ten years continuously is in fact impairing their rights to freedom of speech, freedom of association etc. guaranteed to the applicants/intervenors under the Constitution of India.

132. It is really very strange that despite taking all these pleas and the stand in the line of cross-examination, both the applicants/intervenors have neither chosen to enter into the witness box themselves in support of their stand nor have they chosen to examine any witness. This clearly invites an adverse inference that the submissions made by the applicants/intervenors are incorrect. Further, as a matter of fact, the applicants/intervenors wanted to avoid unpleasant and unsavory questions which could have brought on record the correct position that despite the ban, the organization is indulging in unlawful activities like Jehad and threatening the national integrity and sovereignty.

I, accordingly, draw an adverse inference in this regard against both these applicants/intervenors. It may also be pertinent here to refer to the observation of the Apex Court in *Jamaat-e-Islami Hind (supra)*, where it has been held that the Tribunal has to go by the probabilities of evidence produced by the respective sides and decide the Reference on the basis of the same by appreciating the evidence produced by the two sides. Here is a case where the UOI produces as many as 43 witnesses (one witness at Bangalore is given up), to testify regarding the unlawful activities of the banned association SIMI in almost 16-17 States of the Union of India under the cover of its different frontal organizations and its other members, sympathizers, activists, yet no evidence is produced by the applicants to dislodge the same. Therefore, *prima facie* the UOI has satisfied the Reference being answered in affirmative.

**Application No.14/12—regarding deletion of name of Khair-E-Ummat Trust & Court witness CW-1's name.**

133. While the Tribunal was holding sitting in Mumbai a person claiming himself to be the Secretary of the Trust raised an objection regarding inclusion of the name of Khair-e-Ummat Trust. This application is filed on behalf of the above-named Trust objecting to the inclusion of the

name of the Trust in the background note submitted by the Central Government before this Tribunal as one of the front organizations of SIMI. The application is filed on behalf of the Trust by Mr. Haroon Ali Mozawala, General Secretary of the Trust. It may be pertinent here to mention that even the applicants/intervenors namely Human Ahmed Siddiqui and Misbah Ul Islam also took a plea that the name of this trust has been wrongly mentioned.

134. It is averred in the application that Khair-E-Ummat Trust is a public charitable trust, duly registered with the Office of the Charity Commissioner, Greater Bombay, Navi Mumbai under the Bombay Public Trusts Act, 1955. A photocopy of the certificate of registration is annexed to the application. It is claimed in the application that the objective of the Trust is to spread social and educational awareness within the community and to impart education to under privileged and needy students. The Trust has been carrying out remarkable social, charitable and educational activities amongst the public for the last 14 years in a very peaceful, cordial and effective manner and it has never deviated from its objectives. The Trust comprises several prominent and respectable members of Muslim community as its Trustees. It is claimed that the Trust has always maintained high standards of transparency and legal accountability and it has never come to an adverse notice by any authorities whatsoever in the past. It is submitted that the background note submitted before this Tribunal regarding the Khair-e-Ummat Trust being a front organization of SIMI is totally false, frivolous, baseless and devoid of merit. The Trust, it is claimed, is, in no way, associated with any banned organizations, much less being its front/cover organization. It is submitted that the Trustees are law abiding citizens and have always functioned within the legal framework and have never indulged in any anti-national or unlawful activities.

135. The applicant Trust has appeared before this Tribunal in response to a Public Notice issued in the local newspapers at Mumbai, inviting the general public regarding the sittings of the Tribunal. The applicant Trust claims that the allegations made against them in paragraph 19 of the background note, wherein it has been averred that there are three dozen front/pseudonym organizations of SIMI which are State specific and being used for carrying out its activities, including collection of funds, circulation of literature, regrouping of cadres etc. are false. The paragraph names **Khair-e-Ummat Trust** from the State of Maharashtra as one such organization, which is being objected to by the Trust by way of this application through its General Secretary, Mr. Mojawala.

136. Mr. Mojawala has examined himself as CW1 in support of the affidavit filed by him for deletion of the name of the trust. He was cross-examined at length by the learned ASG on behalf of the UOI.

137. It would be sufficient for the purpose of this Tribunal to *prima facie* establish whether there is any connection between SIMI and Khair-e-Ummat Trust. For undertaking

this exercise, it is necessary to refer to some of the admissions/statements made by Mr. Mojawala during his cross-examination. In his cross-examination, he has stated that the seven Trustees of the Trust had settled this Trust and that Mr. Abdul Gani Atlaswala is the Chairman of the Trust, he himself is the Secretary-General and Mr. Ali M. Shamshi, Dr. Zikraullah, Mr. Meraj Iqbal Siddiqui, Dr. Imtiaz Ali and Mr. Ibrahim Khalil-Abidi are the other Trustees. All the seven Trustees contributed Rs.1,000 each initially towards the corpus of the Trust and that, as on 31-3-12, the balance in the account of the Trust is approximately Rs. 1,50,000.

138. During the course of his further cross-examination, Mr. Mojawala admitted that one of the Trustees, viz. Dr. Ibrahim, had association with SIMI. The witness has also stated that another Trustee, viz., Mr. Ali Shamshi, is an accused in a criminal case registered by the State of Maharashtra on account of some incidents pertaining to a public rally, where Mr. Abu Azmi, the President of Samajwadi Party, Maharashtra Unit purportedly gave some inflammatory speech, trying to create hatred amongst the groups of members of the public and as a result of which cases against all those persons who were sitting on the dias, were registered. He further admitted that Mr. Ali Shamshi was convicted by the competent court in respect of the said offence and has been sentenced to 2 years of imprisonment. He has also admitted that the services of Mr. Ali Shamshi had not been dispensed with on account of his conviction. He also admitted that the conviction of Mr. Shamshi was in respect of an offence under Sections 153A/153B of the Indian Penal Code, 1860 which prohibits a person from making inflammatory speeches which will breed tension and hatred on communal lines.

139. Mr. Mojawala, during the course of cross-examination, also admitted that a student in need of financial assistance, was given the financial assistance, subject to his memorizing the Namaj and being able to recite the Daru-e-Sharif. He further admitted that it was only after a test of the student was taken that he had memorized Namaj and recited Daru-e-Sharif that the financial assistance was released to him. He admitted that if we remember about this condition [all the applicants having memorized Namaj and recited Daru-e-Sharif], we may impose it and if we do not remember it, at times, the financial assistance may be released without this condition being imposed. Furthermore, during the cross-examination, a doubt also got created with regard to the records of receipt and expenses being maintained by the Trust. Furthermore, the witness has also made a statement during his cross-examination that the Trust has also been receiving donations from abroad and proper financial accounts have not been submitted to the authorities. The witness also admitted that the Foreign Contribution Returns (FCR) statements for the Financial Year 2006-2009 have been filed, whereas for the Financial Year 2009-2011, time has been sought to file the same. The witness also could not deny that the Muslims, to whom the financial assistance has

been given by the Trust, have been found guilty of indulging in anti-national activities. On the contrary it has been brought about in the cross-examination that there have been occasions when the students who have been given financial assistance have been found to be involved in the anti-social activities.

140. I may also notice, at this stage, the conduct of the witness while under cross-examination by the learned ASG. The witness, Mr. Haroon Ali Mohd. Mozawala gives his educational qualification only upto 9th standard but at the same time says that he can read and write English. He is aged about 72 years and he claims to be suffering from forgetfulness and old age where he finds answer to be inconvenient. Therefore, he utilizes these factors to his benefit and wherever he wants to give an answer which may favour him, he gives it readily. He also volunteers very frequently to furnish information in order to show that the Trust is not a frontal organization of SIMI for attaining its objectives. The witness has tried to hide all facts from the Tribunal but these have been sufficiently extracted in his cross-examination. He is such an intelligent witness that when a question is put to him as to what does he understand by the term 'jehad', though he admits that jehad means struggle but the illustration which he gives will clearly show how intelligent and crafty he is as he says that the very fact that he had come to Delhi from Mumbai in itself is a jehad and carrying out of any day-to-day activities in itself is also a jehad but at the same time, he says that he is not a scholar in Islam and, therefore, he cannot tell the exact meaning of the same.

141. The above noted admissions/statements by Mr. Mojawala, *prima facie* do not rule out the association of the Trust with SIMI. It is clearly evident that some of the trustees are not only former members of SIMI, but their activities are also akin to the objectives of SIMI. There is also no clarity brought about the persons who receive donations from the Trust. Thus, the contention of the learned Add. Solicitor General that the funds received by the Trust are channelized to the SIMI Cadres cannot be out rightly rejected. As a matter of fact he is not a trustworthy person who can be relied upon. Accordingly in view of the discussions above, IA No.14/12 filed on behalf of Khair-E-Ummat Trust through its Secretary-General, Mr. Mojawala, seeking deletion of the name of Khair-E-Ummat trust as one of the front organizations of SIMI, is rejected.

#### PUBLIC INTERVENTION AT INDORE

142. During the course of the proceedings at Indore, Madhya Pradesh, one public person Mr. Satpal Singh filed his affidavit supporting the Notification issued by the Central Government banning SIMI. He appeared in the witness box and was examined as CW-2. He proved his affidavit Ex. CW-2/1 and stated that although the SIMI organization is banned, but its activities are being carried on by 10-15 people of a particular community in the Tehsil Mehidpur with the help of outsiders. The modus-operandi

of this group is that they would usurp Government land and take its possession as Wakf land. They also try to indoctrinate people for the purpose of carrying out illegal activities of the banned organization. So far as the local administration is concerned, it is ineffective as it is not able to take any action on the illegal activities carried out by these persons.

143. He further stated that Tehsil Nagda comes in Distt. Ujjain only and the banned organization is carrying on its illegal activities in the said Tehsil also. In Ratlam Distt. also, the activities of the banned organization are existing. He further stated that in totality of the circumstances, he, as a resident of district Ujjain, in response to the public hearing, filed his affidavit to say that the ban on SIMI should continue under the Unlawful Activities (Prevention) Act, 1967 on account of their illegal and anti-national activities. He also stated that the members of banned organization SIMI are also frequently indulging in activities of enticing innocent Hindu girls into contract marriages with Muslim boys. This activity is also prevalent in the district and this is being termed as 'Love Jihad'. There is no cross examination of this witness and thus his testimony goes completely unchallenged and cannot be discarded.

#### SUBMISSIONS:

144. I have heard Mr. A.S. Chandhok, the learned ASG on behalf of the UOI as well as Mr. Ashok Aggarwal, the learned counsel appearing on behalf of the applicants/intervenors and have also gone through the records. Both, the learned Senior Counsel have been unanimous on one aspect, that is, with regard to the law laid down by the Hon'ble Supreme Court in Jamaat-E-Islami Hind (supra), so far as the question of adjudicating the reference made to this Tribunal is concerned. Although there have been differences in the perception of interpretation by both of them, each one of them has tried to interpret the judgment in his own way and then has canvassed his case for upholding or rejection of the validity of the Notification banning the organization.

145. Before appreciating the evidence brought on record, it will be pertinent to refer to some aspects of the said reported judgment so far as the facts of the case and the law laid therein are concerned, with regard to the Unlawful Activities (Prevention) Act, 1967 and the Rules framed thereunder:

"The Government of India issued a notification dated 10-12-1992 under Section 3 of the Unlawful Activities (Prevention) Act declaring that the Jamaat-e-Islami Hind, the appellant, was an unlawful Association in view of the facts stated therein as well as other facts and materials in its possession which it considered to be against the public interest to disclose. A reference was made by the Central Government to the Tribunal for adjudication under Section 4. In the inquiry before the Tribunal, the only material produced by the Central Government was a resume prepared on the basis of some intelligence reports

and the affidavits of the Joint Secretary in the Ministry of Home Affairs and the Joint Director, IB, both of whom spoke only on the basis of the records and not from personal knowledge. In rebuttal, affidavits were filed on behalf of the Association of persons whose acts, it was alleged, constituted the grounds for issue of the notification under Section 3(1) of the Act. The deponents of the affidavits were also cross-examined. This constituted the entire material on which the Tribunal rendered its decision that there was sufficient cause for declaring the Association to be unlawful and confirmed the notification.

On behalf of the appellant-Association it was urged that none of the grounds on which the notification was based, even assuming them to be proved, constituted "unlawful activity as defined in Section 2(f) to render the appellant an unlawful Association within the meaning of Section 2(g) of the Act; that the only material produced at the inquiry did not constitute legal evidence for the purpose inasmuch as it was, at best, hearsay, and that too without disclosing the source from which it emanated to give an opportunity to the appellant to effectively rebut the same. In rebuttal by the banned organization, there was legal evidence in the form of sworn testimony of the persons to whom the alleged activities were attributed; and that the inquiry contemplated by the Tribunal under the Act was judicial in nature, which must be in the form of adjudication of a lis giving a reasonable opportunity to the Association to rebut the correctness of allegations against it, and negative the same. On behalf of the respondent Union of India it was on the other hand, contended that the Act was, in substance, in the nature of a preventive detention law and the Tribunal, constituted under the Act, was, like an Advisory Board under the preventive detention law required to examine only the existence of material sufficient to sustain formation of the opinion of the kind required for preventive detention; that such opinion could be formed not only on the basis of legal evidence but also other materials including intelligence reports received from undisclosed sources; and that the requirement of natural justice in such a situation was satisfied by mere disclosure of the information without disclosing the source of the information."

146. The reference, which was made to the Tribunal was regarding the 'sufficiency of cause' to decide as to whether the Notification banning the organization was valid or not. The Tribunal returned a finding in favour of the UOI, holding that there was 'sufficient cause' for the Central Government to issue the Notification banning the organization. This finding of the Tribunal was set aside by the Apex Court after examination of the entire object of the law and the provisions made thereunder. The Apex Court

laid down that when the Notification is referred to the Tribunal for the purpose of adjudication of the lis between the parties as to whether there is 'sufficiency of cause' to ban the organization or not, the Tribunal has to form an opinion, of its own, on the basis of material available and on objective assessment after observing a fair procedure, to prevent any arbitrariness or violation of the principles of natural justice, and then arrive at a conclusion as to whether there is 'sufficient cause' for issuance of notification or not. While doing so, the Tribunal has to keep in view not only the material requirements of natural justice, but also the material produced in such matters as may not be confined only to 'legal evidence' in the strict sense, as has to be subjected to scrutiny in a criminal trial. Since in the said case, the Central Government had not produced any person who deposed from personal knowledge whose testimony could be tested by cross-examination nor did it disclose the identity of those persons, the Tribunal could not arrive at an objective assessment. On the contrary, it was observed that the persons to whom the alleged unlawful acts of the association were attributed, filed their affidavits denying the allegations and also deposed as witnesses to rebut the allegations. It was observed that the Tribunal had no means by which it could decide objectively, as to which of the two versions was credible. It was, thus, held that there was no objective determination of the factual basis for the notification to amount to adjudication by the Tribunal, as contemplated by the statute. Accordingly, the validity of the Notification upheld by the Tribunal was set aside by the Apex Court. While doing so, the Apex Court observed as under :—

"The definitions of 'unlawful activity' and 'unlawful association' under clauses (f) and (g) of Section 2 of the Act make it clear that the determination of the question whether any association is, or has become, an unlawful association to justify a declaration under Section 3(1) should be that "any action taken" by such association constitutes an "unlawful activity" which is the object of the association or the object is any activity punishable under Section 153-A or Section 153-B IPC. Section 3 requires an objective determination of the matter by the Central Government and Section 4 requires confirmation of the act of the Central Government by the Tribunal. The nature of inquiry contemplated by the Tribunal under Section 4(3) requires it to weigh the material on which the notification under sub-Section (1) of Section 3 is issued by the Central Government, the cause shown by the Association in reply to the notice issued to it and take into consideration such further information which it may call for, to decide the existence of 'sufficient cause' for declaring the Association to be unlawful. The entire procedure contemplates an objective determination made on the basis of material placed before the Tribunal by the two sides; and the inquiry is in the nature of adjudication of a lis between two parties, the outcome of which depends on the weight of the material

produced by them. Credibility of the material should, ordinarily, be capable of objective assessment.' The decision to be made by the Tribunal is "whether or not there is sufficient cause for declaring the Association unlawful". Such a determination requires the Tribunal to reach the conclusion that the material to support the declaration outweighs the material against it and the additional weight to support the declaration is sufficient to sustain it. The test of greater probability appears to be the pragmatic test applicable in the context. (paras 9, 10 and 11)

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The scheme of the present Act clearly brings out the distinction between this statute and the requirement under the preventive detention laws to justify the anticipatory action therein of preventive detention based on suspicion reached by a process of subjective satisfaction. The nature of the inquiry preceding the order made by the Tribunal under Section 4 of the Act, and its binding effect, give to it the characteristic of a judicial determination distinguishing it from the opinion of the Advisory Board under the preventive detention laws. (para 13)

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The requirement of adjudication by the Tribunal contemplated under the Act does not permit abdication of its function by the Tribunal to the Central Government providing merely its stamp of approval to the opinion of the Central Government. The procedure to be followed by the Tribunal must therefore, be such which enables the Tribunal to itself assess the credibility of conflicting material on any point in controversy and evolve a process by which it can decide whether to accept the version of the Central Government or to reject it in the light of the other view asserted by the association. (para 21)

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In Section 4, the words 'adjudicating' and 'decide' have a legal connotation in the context of the inquiry made by the Tribunal constituted by a sitting Judge of a High Court. The Tribunal is required to 'decide' after "notice to show cause" by the process of 'adjudicating' the points in controversy. The requirement of specifying the grounds together with the disclosure of the facts on which they are based and an adjudication of the existence of sufficient cause for declaring the association to be unlawful in the form of decision after considering the cause, if any, shown by the association in response to the show-cause notice issued to it, are all consistent only with an objective determination of the points in controversy in a judicial scrutiny conducted by a Tribunal constituted by a sitting High Court Judge. The test of factual existence of grounds amenable to objective determination by the court for adjudging the reasonableness of restrictions placed on the right

conferred by Article 19(1)(c) to form associations, in the scheme of the Unlawful Activities (Prevention) Act, is equally applicable in accordance with the decision in *V.G. Row*. It is, therefore, this test which must determine the meaning and content of the adjudication by the Tribunal of the existence of sufficient cause for declaring the Association to be unlawful under the Act. (paras 14, 20 and 19).

The scheme under this Act requiring adjudication of the controversy in this manner makes it implicit that the minimum requirement of natural justice must be satisfied, to make the adjudication meaningful. The requirement of natural justice in a case of this kind must be tailored to safeguard public interest which must always outweigh every lesser interest. Thus, subject to the non-disclosure of information which the Central Government considers to be against the public interest to disclose, all information and evidence relied on by the Central Government to support the declaration made by it of an association to be unlawful, has to be disclosed to the association to enable it to show cause against the same. Subject to the requirement of public interest which must undoubtedly outweigh the interest of the association and its members, the ordinary rules of evidence and requirement of natural justice must be followed by the Tribunal in making the adjudication under the Act.” (paras 20)

147. It is, in the light of the aforesaid observations of the Apex Court that the evidence adduced before the Tribunal requires to be examined to conclude whether or not there is ‘sufficiency of cause’ in sustaining the notification issued by the Central Government under Section 3(1) of the Act. It may also be pertinent to note, at this stage, that it is not necessary that to determine the ‘sufficiency of cause’ the Central Government must prove, in entirety, all the grounds stated by it in the background note. Even if, one ground stated in the background note establishes the ‘unlawful nature of activity of the organization’, it would be ‘sufficient cause’ to confirm the notification under Section 3(1) of the Act.

148. I have, in Para 126, observed that the UOI has produced 43 witnesses in all who have, by preponderance of probability, established that SIMI, an association banned since September, 2001, has still been functioning in a surreptitious manner under the cover of more than 50 organizations whose names are given in the background note. The applicants have not denied involvement of any organization except one which is called as Khair-e-Ummat Trust. The non-denial of association with these organizations shows that they are being used as cover organizations. So far as Khair-e-Ummat Trust is concerned, the Secretary of the Trust has come in the witness box but in cross- examination, he has also fallen flat and has not been able to discredit the averments made in the background note of their association with SIMI or SIMI using the said Trust as a cover organization.

**Incidents which have taken place after the last notification having been issued by the UOI declaring SIMI as a banned organization.**

149. It may be pertinent here to state that the last notification was issued by the UOI on 4-2-2010. Sufficient evidence has already been brought on record by way of statements of witnesses, PW1 to PW43 to show that there is a certain amount of continuity in the activities of the banned organization in carrying out its agenda of illegal and unlawful activities in accordance with its constitution with the purpose of carrying out Jehad for the establishment of an Islamic State. This is against the very basic fabric of the Constitution of India which has a secular and democratic structure. The following are the incidents which have taken place after the issuance of the last notification which can show that sufficient material has been brought on record by the UOI thereby establishing ‘sufficiency of its cause’ to continue the ban on the organization.

(A) Kiran Lashkarkar, S/o Shankar Rao Lashkarkar, posted at SDOP Mundi, Distt. Khandwa, Madhya Pradesh, PW26, has proved his affidavit, Ex.PW26/1 wherein he has stated that on 13-6-2011, a secret information was received that 10-15 members/activists of the banned organization SIMI have gathered in Gulmohar Colony, Khandwa in the house of Akhil Khilji, where they were planning/conspiring to commit untoward and anti national activities/attacks. As a consequence of this, a police party was constituted and raid was conducted. From there, 10 accused persons were arrested on the spot. Their names are given in the affidavit. Seizure of various contrabands, like one pistol, three cartridges and literature which was seditious in nature was effected. Different literatures were seized, apart from fire arms.

(B) PW-41, Sanjeev Kumar Yadav, S/o Shri Nand Ji Yadav, DCP, Special Cell, Delhi has proved his affidavit, Ex.PW41/1, wherein he has stated that on 19-9-2010 at about 11:24 hours, an information was received that some unknown bikers at Gate No.3 of Jama Masjid had fired at some foreigners. The necessary Police entries were made. FIR 65/2010 was registered at PS: Jama Masjid and the investigations were taken up. The following articles were recovered from the spot:—

- (1) one loaded magazine containing 9 live cartridges.
- (2) 11 empty shells/fired cartridges.
- (3) Two distorted leads of fired cartridges.

The investigations were transferred to the Special Cell of New Delhi. On the same date, at about 1420 hours, another incident had taken place with regard to the burning of a Maruti car, bearing Registration No. DL 6-CD- 1042, Opp, Gali Gulian, Dariba Kalan. This was also recorded vide FIR No.66/2010 at Jama Masjid. The investigations of these two FIRs led to the arrest, in December 2010, of one Tarique Anjum Ahsan who is purported to have admitted that Ahmad Siddibappa @ Imran had attacked the foreigners and exploded a bomb in a car. It has also been admitted by

Tarique Anjum Ahsan that he was introduced to Ahmad Siddibappa by one Mohd. Jasim who had admitted that Mohd. Tarique Anjum Ahsan as well as Ahmad Siddibappa were the senior members of SIMI. The attempt purported to have been made by this person is a *prima facie* material which shows that there are members and sympathizers who are acting as activists and continuing the illegal and unlawful activities of the banned organization which warrant to be curbed.

(C) PW-32, G. Guru Raghavendra, S/o G. Yellamanda, Inspector of Police has proved his affidavit, Ex. PW-32/I at Hyderabad who has stated that on 22-6-2011, Syed Afq Iqbal @ Labal @ Iqbal @ Danish @ Safi, S/o Saiyed Nurulahoda Saiyed, aged 29 years admitted that he had taken a fake SIM Card in the fake name of Manzoor Alam for himself. He has also admitted that he was in touch with one Abu Faisal, another activist of SIMI whom he had received at Hyderabad and made arrangement for his residence at Gayatri Hills, apart from staying at his residence on one of the days. He has further stated that he was in touch with Safdar Nagori, former Secretary as well as President of SIMI who was intending to carry out Jehad in India. It was also established that some seditious material in the form of books was also handed over to him. The testimony of this witness has remained undemolished during the cross-examination.

(D) PW-9. Sh. Swapan Banerjee Purnapatra, S/o Late Kanai Lal Banerjee Purnapatra, Deputy Inspector General of Police, Intelligence Branch, West Bengal, 13 Lord Sinha Road, Kolkata has proved in his affidavit Ex. PW-9/A that on 17-11-2010 SIMI Activists collected Zakat (donation) from Khidirpur, Metiabruz, Park Circus, Kolkata, Hooghly, Howrah, Malda and Murshidabad District of West Bengal which was ostensibly meant for raising funds to meet expenditure of court cases relating to the ban on the outfit.

(E) PW-43, G. Samphat Kumar, S/o Sh. Thiru K. Guruswamy, Suptd. of Police, Special Division, Special Branch, CID, Chennai, Tamilnadu has proved his affidavit, wherein he has stated that SIMI activists are acting under the banner of Wahdat-E-Islami Hind (WEI) and are conducting meetings/classes, symposiums/seminars and interactions with their Kerala counterparts, etc. They conducted one such seminar at Chennai on 26-02-2012 titled "Lesson to be learnt from the life of Prophet Mohammed" in which Ziauddin Siddique, Secretary of Wahdat-E-Islami Hind also participated. The real object of the meeting was to promote the activities of Wahdat-E-Islami Hind, which is a front organization of SIMI. To substantiate the same, he has enclosed the certified copy of the invitation in Tamil and English as Annexure R/5 (Colly) to his affidavit.

(F) PW-24, Mr. Sohanpal Singh Chaudhary, has proved in his affidavit that on 27-5-2011, one Bherulal Tank, a local journalist of the newspaper Swadesh, was fired upon and suffered bullet injuries in his stomach, chest and back, consequent to which, FIR no. 112/11 was registered against seven accused persons. One of the accused, Abu Faizal, in

his statement under Section 161 CrPC stated that he was associated with members of SIMI. He, along with other persons had conducted dacoity in Mannapuram Gold Finance Company, Bhopal in October, 2011. He also stated that in May, 2011, they had conspired to assassinate Bherulal Tank and in pursuance to their motive of killing him, had fired gunshots on him. The other accused persons have also reiterated the incidents of dacoity and conspiracy to murder Bherulal Tank in their respective statements.

(G) PW-25, Mr. T.S. Baghel, has proved in his affidavit that the accused persons had conducted bank robbery which took place on 01-06-2010 at State Bank of Indore, Branch Pipalmandi, consequent to which FIR was registered. In the chargesheet filed on 14-12-11, in respect to the said FIR, two Cassettes of SIMI closed in a pink plastic cover were recovered from the accused Mohd Sajid on 29-9-11. In the Panchanama of the accused persons in the said FIR, the possession of the cassettes of SIMI as well as their involvement in bank robberies and other SIMI operations was stated.

(H) PW-16, Mr. Suresh Digambarao Deshpande, has proved in his affidavit that on 22-8-2011, one Haroon Rashid was arrested for possession of fake Indian currency notes. In his statement under 161 Cr PC, he stated his association with SIMI and the activities carried out by the banned organization. He also revealed about other two active members of SIMI namely Asrar Ahmad and Azhar ul Islam, consequent to which, they were also arrested. In their statements also, they revealed about their association with SIMI and the unlawful activities carried by the organization even after the ban imposed upon it.

(I) PW-20, Mr. Mahendra Tarnekar, has proved in his affidavit that certain persons, the names of whom are given in the affidavit, were active members of SIMI and they had conspired to kill the Judges of Lucknow Bench of the Allahabad High Court, who had given the Ram Janam Bhumi- Babri Masjid verdict. They had also organized a training camp in Raipur, Chattisgarh in May, 2011 in pursuance of the same. They also revealed about their other activities which included dacoity, conspiracy to assassinate the jailor of the jail where prominent SIMI activist, Safdar Nagori was lodged with other such activists.

150. While the Tribunal has tried to confine its enquiry to the cases registered after the report of the last Tribunal, however, the past conduct of the organization will also need to be looked into, to a limited extent, for assessing the sufficiency of the cause.

151. The Central Government has placed on record the reports of the previous Tribunals, which have been examined. These reports, based on evidence led in respect of cases registered since the ban on SIMI in September, 2001, establish consistent and continuous activities by SIMI cadres, which are intended or support any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incite any

individual or group of individuals to bring about such cession or secession or which disclaim, question, disrupt or are intended to disrupt the sovereignty and territorial integrity of India or which cause or are intended to cause disaffection against India. The said activities have continued despite the ban on the organization from September, 2001 onwards, through the named front organizations. The wide-spread nature of activities spread across almost the entire country, causing incident of bomb blasts, extortion, robberies, murders, etc. through a network of activity, in pursuit of a fundamentalist agenda, contrary to the Constitution and established law of the land, cannot be allowed to exist and grow.

152. The evidence led before the Tribunal has succinctly brought on record the commission, nature and aim of the activities indulged in by SIMI cadres, which are not only anti-national, but are capable of causing social unrest.

153. The incidents brought on record are very serious in nature and the persons and organizations responsible for the same, viz., SIMI and its cadres, need to be prevented by all possible means, including the invocation of Unlawful Activities (Prevention) Act, 1967, from pooling together their resources for indulging in activities, which are 'unlawful' within the meaning of 'unlawful activity' as defined in Section 2(o) of Unlawful Activities (Prevention) Act, 1967. It may also be appropriate for the Central Government to have a closer scrutiny of the affairs of the front organizations of SIMI so far as it prevents their involvement and support for the activities of SIMI.

#### CONCLUSION:

154. In view of the aforesaid discussion, the following points/conclusions emerge:

- (i) SIMI has been banned as an unlawful Association within the definition of Section 2(p) of the Act as the Association and its former office bearers, members, sympathizers and activists are carrying on unlawful activities within the definition of Section 2(o) of the Act in a clandestine manner by using the cover of different names of the associations in different States purporting to give a false impression to the public that these cover organizations are working for social upliftment of members of the Muslim community whereas actually it is regrouping, recruiting new members and radicalizing them by indoctrination to wage the 'Jehad', to establish Islamic rule in the country and thereby destroy the secular fabric of the country.
- (ii) The Supreme Court in Jamaat-E-Islami Hind case (*supra*) has authoritatively laid down the scope of inquiry, methodology and quantum of proof required to uphold the validity of the declaration issued by Central Government. It has been held in the said judgment as under :
  - (a) The inquiry or adjudication is not in the nature of a 'criminal trial' but it is an 'inquiry' in which
- (b) The inquiry is in the nature of adjudication of a lis between two parties, that is, Union of India and the banned organization SIMI. The ex-office bearers of SIMI, H.A. Siddiqui and Misbha-Ul-Islam are deemed to be representing the banned organisation. The Tribunal has to weigh the material produced by both the sides and decide its credibility and arrive at its objective assessment whether or not there is 'sufficient cause' for declaring the organization as an 'unlawful association'. The material produced to support the declaration must outweigh the material against it on the principles of greater probability.
- (c) The Tribunal is not to act as a mere rubber stamp for certification of the action of the Union of India.
- (iii) The Union of India has given a number of grounds for declaring SIMI as an 'unlawful association' which has been indulging in 'unlawful activities' through its former officer bearers, former members, sympathizers and activists.
- (iv) The Union of India has produced 43 witnesses, in support of its action of banning the organization SIMI vide notification No. S.O.224(E), dated 3rd February, 2012. Only one witness Mr. Jayant Vasudev Shetty (PW-12) was examined partially at Bangalore and thereafter dropped. The testimony of these witnesses has shown continuity in the unlawful activities of the banned organization through its activists. Prominent among them is regrouping, recruiting fresh members, widening their network, indulging in terrorists activities, manufacturing and planting of bombs, taking innocent lives and challenging the lawful authority of the State.
- (v) Some salient features of the evidence brought on record, clearly establish, by preponderance of probability or what is called by the Apex Court as objective assessment, that SIMI was banned for the first time in September, 2001, which ban was subsequently thereto upheld by Tribunal headed by Hon'ble Mr. Justice S.K. Aggarwal. Since the ban under the Act is only for two years, the subsequent bans imposed by the Union of India were upheld by the Tribunals headed by Hon'ble Mr. Justice R.C. Chopra, Hon'ble Mr. Justice B.N. Chaturvedi and Hon'ble Mr. Justice Sanjiv Khanna. In between

rules of evidence in *stricto sensu* are not applicable. The provisions of Evidence Act, 1872 are to be followed as far as practicable. Further, what is admissible in the inquiry by the Tribunal is not only legal evidence but even the material which is brought on record by the Union of India. It is observed that the principles of natural justice and fair play have to be followed.

Hon'ble Ms. Justice Gita Mittal held that the organization SIMI still exists but the Tribunal held that the grounds, on which the notification was issued by the Union of India were deficient. This order of Hon'ble Ms. Justice Gita Mittal was stayed in a Special Leave Petition preferred by the Union of India before the Supreme Court and the matter stands admitted. The net result of this stay was that the ban on the organization continued for a period of two years from the date of issue of the notification till the time the new notification came into existence in 2010. The said notification banning SIMI was upheld by the Tribunal headed by Hon'ble Mr. Justice Sanjiv Khanna.

- (vi) All these notifications are public documents within the definition of Section 74 and have been proved in accordance with Section 78(i)(a) of the Evidence Act, 1872 and the Tribunal has taken judicial notice of these notifications as a formal proof of the document. Further, as the proceedings before the Tribunal are judicial proceedings, therefore, the record of the notification issued by the Union of India pursuant to the upholding of the earlier ban are presumed to be correct and duly proved.
- (vii) The evidence which has been brought before this Tribunal has proved by preponderance of probability that though SIMI has been banned in September, 2001 but despite the ban, the organization has been functioning on the ground, carrying out its activities overtly or covertly through its ex-office bearers, members, sympathizers. The prominent among them are the names of different persons who are very active in their own states. Most of the witnesses have brought out in their statements, their agenda of converting India into an Islamic State. To illustrate this, Safdar Nagori's name has surfaced from Madhya Pradesh who is a very prominent SIMI activist and Saquib Nachan's name has surfaced from Maharashtra, etc. as prominent operatives of SIMI in that area. He is also facing trial in some of the cases pertaining to terrorist activities.

Similarly, in West Bengal, an activist by the name of Tayedul Islam, is active; in Hyderabad, Maulana Naseeruddin and Abdul Rehman are active sympathizers working for SIMI and in Rajasthan, Sajid Saharai. All these operatives are in touch and in league with each other and indulging in unlawful activities within the definition of Section 2(o) of the Act by recruiting, training, motivating and indoctrinating young minds to indulge in terrorist activities, making and planting bombs, taking innocent lives, gather firearms and for this purpose, even commit robberies and dacoities.

- (viii) The very aims and objects of SIMI, according to the Constitution of the organization, is to establish an Islamic State. In fact, the oath (Ahadnama, Bara-e-

Ikhwan/akhwat) administered at the time of enrolment as an Ansar is in the nature of a promise that he would work for establishment of Islamic System in his country. The relevant part of the, oath administered to an Ansar reads as under :

"I promise that I would work for liberation of humanity and establishment of Islamic system in my country. I will spend my time, resources and capacities in this cause and won't spare my life if need be" CW-I, Haroon Mozawala also admitted in Court that before a student is given scholarship he is required to memorize certain religious prayers and teachings which only showed that the trust was breeding fanatics.

- (ix) The very purpose of establishing an Islamic State is against the preamble of the Constitution of India, which declares India as a secular State. On the contrary, the action of the SIMI and its various front organizations is to show intolerance towards other religions, breed communal hatred and create social tension and consider themselves and the Muslim community in general as the wronged community on account of Babri Masjid demolition and to change the same.
- (x) It has come on record that there are nearly 52 front organizations, under whose cover the anti-national activities are being carried out by SIMI. Even though 52 front organizations are named, only one organization/trust came forward to challenge their inclusion as a front organization of SIMI in the background note. The two ex-office bearers, H.A. Siddiqui and Misbah-Ul-Islam, appearing as surrogate persons for the banned organization also in their reply, have not challenged this except in the case of one organisation, i.e., Khair-E-Ummat. This trust was represented by an elderly gentleman named Haroon Ali Mohd. Mozawala, General Secretary of the Trust, who was examined as CW-I. In his cross-examination, he was established to be a person, whose own son-in-law, settled in Saudi Arabia, who is funding the trust which was apparently giving scholarship to the students of the community for higher studies and for medical treatment of patients, but these students were found to be highly indoctrinated and motivated using the facilities of Hostel and the cover of being students to actively indulge in unlawful activities and furthering the objectives of the banned organization so as to create Islamic rule by use of force, indoctrination and misinterpreting the objectives of the pious religion. Some of the students, who were given scholarships, were arrested for being involved in terrorist activities. Even the trustees of this Trust were found to be ex-activists of SIMI and, therefore, all these trustees and the Trust itself was rightly named as front cover organization for SIMI to indulge in illegal activities.

(xi) The appearance of H.A. Siddiqui and Misbah-Ul-Islam is for the banned organization and not in their individual capacity as aggrieved persons. This is a surrogate representation by SIMI.

155. In view of the evidence brought on record and the aforesaid discussion, the only conclusion possible is that SIMI and its cadres have continued to indulge in activities which are detrimental and prejudicial to the national interest and have the potential of posing a threat to the national integrity and sovereignty of the nation. SIMI cadres have continued to indulge in such anti-national activities by forming other front organization, like Indian Mujahiddin, Wahdat-e-Islami, etc. It has continued to recruit and enroll fresh members in their cadres. The evidence brought on record and the cases registered after the report of the last Tribunal overwhelmingly prove that the organization is continuing to work surreptitiously, posing a threat and challenge to the sovereignty of the Indian nation. This is also established through the testimony of witnesses examined in Kerala where it has been brought on record that the sympathizers/activists of this banned organization have supported the so called Jihad of Muslims of Kashmir against the alleged forced occupation of Kashmir where two operatives from Kerala got killed, even when they fully know that majority of Muslims in Kashmir are peace loving and have democratically elected their own representatives to rule them. Further, these persons have scant respect for innocent women lives and know the fact that the State of Jammu & Kashmir is an integral part of India.

156. The reply filed by H.A. Siddiqui and Misbah-ul-Islam, though as individuals, is taken to be a surrogate reply filed by and on behalf of the banned organization, SIMI. The averments made in the said reply that SIMI, after the first ban, has ceased to exist or that it is not a criminal organization or that its ex office bearers or ex members are not indulging in any unlawful activities or terrorist activities or committing offences of waging a war, spreading hatred and creating communal tension, is not established by even an iota of evidence. However, the fact that SIMI is not in existence and not indulging in clandestine and unlawful activities is not established by any credible evidence as these two applicants/intervenors have neither chosen to appear in the witness box to support the averments made in their reply nor adduced any evidence in this regard. Therefore, in terms of the judgment of the Hon'ble Supreme Court in jamaat-e-Islami Hind case (supra), the evidence, having not been produced by the applicants/intervenors or the banned organization, leads to the only irresistible conclusion, on the basis of preponderance of probabilities after assessing the material produced by the UOI, that there is 'sufficient cause' to declare SIMI as an unlawful association, as it is indulging in unlawful activities. For arriving at this conclusion, even the Union of India and as many as 8 States have furnished confidential information which has been also perused by the Tribunal except in the case of Gujarat as it was not accompanied with English translation.

157. For the foregoing reasons, I, in pursuance to the statutory reference made to the Tribunal under Section 4 of the Act, hold that the Central Government has been able to establish that there is 'sufficient cause' for declaring SIMI as an unlawful association and accordingly, confirm the declaration made in the Notification No. : S.O.224(E) dated 3.2.2012 issued by the Central Government under Section 3(1) of the Act.

#### SUGGESTIONS:—

158. Although this may not be strictly within the domain of the reference made to the Tribunal by the Central Government, however, while dealing with the reference, the Tribunal feels that it must unhesitatingly bring to the notice of the Union of India certain facts for its consideration, which are detailed as under:—

(i) So far as the Unlawful Activities (Prevention) Act, 1967 is concerned, it prescribes that the ban which may be imposed by the Central Government in terms of Section 3 of the Act, can be valid for a period of two years, within which it has also to be approved by the Tribunal, duly constituted under Section 4 of the Act by making a reference within thirty days of the promulgation of the said notification. The said period of two years, fixed by the statute, is grossly inadequate and needs to be increased to a minimum period of five years. This is on account of the fact that the notification having been issued by the UOI banning the particular organization and the reference having been received by the duly constituted Tribunal, it entails lot of time and expenditure of the constitutional as well as public functionaries at different levels, in different States, for the purpose of recording of evidence and deciding the validity of the notification. Since the Tribunal is headed by a Judge of the High Court, the normal adjudicatory work assigned to the Judge is also impacted, resulting in the delay of disposal of normal cases also. Therefore, the Tribunal is of the view that the validity of the period of notification so issued under Section 3 of the Unlawful Activities (Prevention) Act, 1967, subject to its being upheld by the duly constituted Tribunal, should be for a minimum period of five years. So far as revocation or cancellation of the ban is concerned, it can be done even at a shorter period if the situation so warrants. The Union of India on representation by the aggrieved party or suo motu can always do the same in pursuance to Section 6(2) of the Act.

(ii) During the course of recording of the evidence, the Tribunal has interacted with a number of Muslims across the board as ex members/office bearers of the banned organization as well as the persons belonging to other religious minorities and linguistic groups. As no religion preaches violence and taking the lives of innocent people, the pious religion of Islam is also not preaching to the contrary. Further, by and large all Muslims living in India are nationalists who have abiding faith in the rule of law and the Constitution.

except the fringe elements, especially indoctrinated by the Muslim fundamentalists and extremists who propagate establishment of a theocratic and Islamic State. It is the abject poverty and the lack of employment in the community which is driving some of the members to carry out these illegal and unlawful activities in the name of religion by associating themselves with the banned organization. To give an illustration in this regard, it has come in evidence that certain accused persons, who were doing the zari work and earning their livelihood and maintaining their families, on account of poor financial conditions, were allured by the fundamentalists in the name of Jehad and then led to the path of crime under the cover of these banned organizations. This indoctrination is not only confined to illiterate and the uneducated, but has even fascinated highly qualified doctors, engineers as well as technocrats who are computer savvy. Efforts must be made, by involving the sane elements, leaders, religious and otherwise, of the community and all others who can be of assistance, to isolate these misguided youth who can be thereafter be brought into the mainstream. At the same time, the State Authorities need to deal squarely and firmly with the incorrigible elements so that there is a definite deterrent on the young and impressionable minds who adopt the path of crime in the name of religion and take innocent lives.

(iii) Another aspect which has been noticed is that the banned organization is functioning all over the country in the guise of its other frontal organizations. Most of the names of such organizations are also giving an impression that neither they have anything to do with the interests of the Muslim community nor with the Islam. To illustrate this, there are frontal groups by the name of Secular Democratic Front of India. These types of names are a misnomer and misleading, in as much as they do not give any *prima facie* indication that the organization is an unlawful association and is indulging in illegal and unlawful activities. Similarly, the accused persons with criminal tendencies and such bent of mind are having Muslim names with a number of alias/nicknames which ultimately culminates into a Hindu name, like Raju, as has happened in one case, thereby giving an impression as if an operative is not only a member of the minority community, but also is a member of some other community. This trend needs to be arrested at an early date and such organization and individuals need to be identified and their affairs looked into.

Justice V. K. SHALI, Chairman  
Unlawful Activities (Prevention) Tribunal

August 1, 2012

[F. No. 14017/13/2012-NI-III]  
RASHMI GOEL, Jt. Secy.